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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

12 CV 1422 (JSR)

6 BANK OF AMERICA CORPORATION,
7 successor to Countrywide
8 Financial Corporation,
9 Countrywide Home Loans, Inc.,
and Full Spectrum Lending, et
al.,

10 Defendants.

11 -----x

12 New York, N.Y.
13 October 3, 2013
9:145 a.m.

14 Before:

15 HON. JED S. RAKOFF,

16 District Judge

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Southern District of New York

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(In open court; jury not present)

THE COURT: Let's get the witness on the stand and bring in the jury. I'm sorry you had to wait for the other proceeding, but we're now ready to proceed with this matter.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We're ready to begin.

BENJAMIN TANABE,

CROSS-EXAMINATION

BY MS. MAINIGI:

Q. Good morning, Mr. Tanabe.

A. Good morning.

Q. I believe we left off yesterday discussing the Freddie Mac average NAQ rate in the 2007, 2008 time period. Can you remind me what NAQ stands for, please?

A. Non-acceptable quality.

Q. Thank you. That was the third way, the NAQ process was the third way that Freddie had visibility into the processes and quality of loans, correct?

A. It was one of four primary ways.

Q. One of them was LP Emulator which we discussed yesterday?

A. Correct.

Q. The other was collateral models, which we discussed yesterday?

A. Correct.

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Tanabe - cross

1 Q. And obviously NAQ. And the fourth way was review of the
2 defect rates, correct?

3 A. The fourth way was the performance of the loans. How many
4 defaulted, how many paid on time in the various default
5 categories.

6 Q. One of the things you mentioned yesterday in your direct
7 testimony, Mr. Tanabe, was something called EORM review, do you
8 remember that?

9 A. No. But I'm familiar with the EORM reviews.

10 Q. Can you explain what that is?

11 A. EORM review is where we have auditors that go on-site and
12 do an audit of individuals, companies, processes, relative to
13 Freddie Mac requirements. And also good business practices.

14 Q. EORM stands for what, Mr. Tanabe?

15 A. I would get this mostly right. External operating risk
16 management.

17 Q. I think you're right.

18 A. Okay. Thanks.

19 Q. Thank you. That is essentially an on-site type of review
20 where the Freddie auditors go on-site and do various types of
21 tasks?

22 A. Yes.

23 Q. I take it during an EORM review, the lender also has an
24 opportunity to affirmatively provide information to Freddie
25 Mac, is that fair?

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Tanabe - cross

1 A. Correct.

2 MS. MAINIGI: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. Mr. Tanabe, DX 43 is an external operational review,
5 correct?

6 A. Yes.

7 Q. And the time period is September 10 through 14, 2007, is
8 that right?

9 A. I haven't had a chance to look at it.

10 Q. Let me give you a moment to look at the cover page.

11 A. It says fieldwork was performed on September 10 --

12 THE COURT: Don't read it.

13 THE WITNESS: Okay. Yes.

14 Q. Obviously this is an EORM review of Countrywide, correct?

15 A. Correct.

16 Q. The fieldwork for the operational review was performed in
17 the September 10 through 14th, 2007 time period, is that
18 correct?

19 A. Yes.

20 Q. I see that you are copied on this document, is that
21 correct?

22 A. Correct.

23 Q. Would you routinely receive EORM reviews of your lenders?

24 A. Yes.

25 MS. MAINIGI: I ask that DX 43 be admitted.

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1 MS. LONDON: No objection, your Honor.

2 THE COURT: Received.

3 (Defendant's Exhibit 43 received in evidence)

4 Q. Take a look at the first page. If we can blow that up,
5 Alex, please.

6 These are all the individuals at Freddie Mac,
7 Mr. Tanabe, that would receive EORM reviews?

8 A. That would receive this review.

9 Q. The date of the review is November 15, 2007, correct?

10 A. The date of the e-mail that distributed the review is.

11 Q. Then it notes in that first paragraph that the time period
12 that the review was performed is September 10 through 14?

13 A. Correct.

14 Q. Why don't we turn to page -- the next page, page one,
15 please. If we can blow up the summary report right there in
16 the center, Alex, please.

17 Mr. Tanabe you can follow along on that. The summary
18 report, I take it, summarizes all of the ratings that
19 Countrywide received in this EORM review, correct?

20 A. Correct.

21 Q. The EORM review analyzes in part the risk associated with
22 Countrywide, correct?

23 MS. LONDON: Objection.

24 THE COURT: Ground?

25 MS. LONDON: Vague.

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1 THE COURT: Sustained.

2 Q. Tell me what the overall risk assessment is there on the
3 summary report, Mr. Tanabe.

4 A. It is a statement about the overall quality of the
5 processes that Countrywide displayed in the categories above.

6 Q. The categories are, sir?

7 A. Production, underwriting, anti-predatory, quality control,
8 secondary marketing, servicing, default management, investor
9 reporting.

10 Q. What was the rating that Countrywide received?

11 A. A satisfactory.

12 Q. Why don't we move ahead. First part of this report is an
13 executive summary, Mr. Tanabe?

14 A. Yes.

15 Q. Why don't we move ahead to page four, please. Let's look
16 at the issue that begins with what is the process for manually
17 underwriting loans. Right there in the middle of the page and
18 let's blow that question and answer up.

19 What section of the review is this in, Mr. Tanabe?

20 A. The single -- probably the underwriting section. It would
21 be into the underwriting sections rate.

22 Q. "Issue: What is the process for manually underwriting
23 loans?" Could you read the EORM response, Mr. Tanabe.

24 A. Sure. "All loans, from all channels of origination, are
25 initially input into CLUES, CHL's proprietary automated

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1 underwriting system, and boarded on the CHL system so that all
2 loans are subject to automated reviews and included in
3 analytics. Loans are then underwritten by CLUES, LP or DU.
4 Only loans that are not approved by the AUS are manually
5 underwritten."

6 Q. Is the EORM response information that Countrywide provided
7 to Freddie Mac?

8 A. The EORM statement in part was developed by information
9 acquired by -- from Countrywide.

10 Q. So, through communications between Countrywide and Freddie
11 Mac as part of this EORM review, Freddie Mac certainly was
12 aware that only loans that are not approved by the AUS are
13 manually underwritten, correct?

14 MS. LONDON: Objection.

15 THE COURT: Ground?

16 MS. LONDON: Misstates evidence.

17 THE COURT: Well, it is a question. But if the
18 objection is that he is being asked to comment on the
19 collective state of mind of Freddie Mac's awareness, then I
20 would have to sustain the objection of course.

21 MS. LONDON: That is also a basis.

22 THE COURT: Sustained. Rephrase the question.

23 Q. Mr. Tanabe, through the communications in relation to this
24 EORM review, the individuals from Freddie Mac who were present
25 for the EORM review learned that only loans that are not

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1 approved by the AUS are manually underwritten, correct?

2 MS. LONDON: Objection, your Honor.

3 THE COURT: What is the objection?

4 MS. LONDON: Lack of personal knowledge.

5 MS. MAINIGI: I believe he received a copy.

6 THE COURT: Yes, as phrased I will sustain that
7 objection. And therefore don't have to reach the objection
8 that the document speaks for itself.

9 Q. You received a copy of this review, correct, Mr. Tanabe?

10 A. Yes.

11 Q. And Countrywide was one of the large lenders that you had
12 ownership over from a credit perspective, correct?

13 A. Yes.

14 Q. I assume you would have reviewed this EORM report quite
15 thoroughly at the time, correct?

16 A. Yes.

17 Q. So you would have seen that passage that we just read, to
18 the effect that only loans that are not approved by the AUS are
19 manually underwritten, correct?

20 A. Yes.

21 Q. Could you turn to page 13, please, sir.

22 MS. MAINIGI: Alex, if we could blow up first just
23 that middle part of the page that says underwriting. And up
24 until additional information. Actually, we just want the top
25 part first, please.

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1 Q. Mr. Tanabe, this is the underwriting section of the EORM
2 review?

3 A. Yes.

4 Q. Is that right?

5 A. Yes.

6 Q. What is the rating that Countrywide received?

7 A. Satisfactory in underwriting.

8 Q. No risks were identified, correct?

9 A. Correct.

10 Q. Could you read the paragraph described in rating
11 justification, please.

12 A. "CHL maintains solid controls over the underwriting and
13 appraisal management functions. Controls are in place to
14 monitor underwriter's performance, address processing
15 deficiencies, provide fraud control procedures, provide
16 appraisal review procedures, and ensure consistent processes
17 through the documented procedures. CHL's controls are in line
18 with its peer group and industry standards, which supports a
19 satisfactory rating."

20 Q. So, as someone highly placed in the risk department at
21 Freddie Mac, when you read this, you understood that CHL's
22 controls are in line with its peer group and industry
23 standards, correct?

24 A. That would be my conclusion.

25 MS. MAINIGI: Alex, if we could blow up the section

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1 entitled key controls, please. We can eliminate the top part.

2 Key controls is a little bit further down the page, correct.

3 Q. Mr. Tanabe, if you could read the first bullet out loud,
4 please, sir.

5 A. "Underwriting ranking is a pivotal control in the
6 decentralized underwriting system as loans are assigned to
7 underwriters based on loan complexity. AUS approved loans with
8 typical underwriting conditions can be processed and approved
9 by junior underwriters who have no manual underwriting
10 authority."

11 Q. So, when you read this report at the time, in 2007, you
12 would have seen that AUS approved loans with typical
13 underwriting conditions can be processed and approved by junior
14 underwriters who have no manual underwriting authority,
15 correct?

16 A. Correct.

17 Q. Could you read the next bullet, please.

18 A. "All high-risk loans require a second level approval from
19 the most senior level underwriters."

20 Q. And the next bullet, please, sir.

21 A. "CHL performs verification of employment, income, and asset
22 on 100 percent of loans. CHL is in the process of developing
23 currently in beta test, a checklist for testing reasonableness
24 for stated income loans."

25 Q. And the fourth bullet, please, sir.

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1 A. "All loans from all channels of origination are initially
2 input into CLUES CHL's proprietary automated underwriting
3 system and boarded on CHL's systems, so all loans are subject
4 to automated reviews included in analytics. Loans are then
5 underwritten by CLUES, LP or DU. Only loans that are not
6 approved by the AUS are manually underwritten."

7 Q. Those last two sentences, loans are then underwritten by
8 CLUES, LP or DU, only loans that are not approved by the AUS
9 are manually underwritten. That's essentially the same
10 language that we saw earlier in the report, correct?

11 A. Correct.

12 Q. We can set that aside, Mr. Tanabe.

13 MS. MAINIGI: May I approach, your Honor?

14 THE COURT: Yes.

15 Q. DX 406 is an admitted document. This is a presentation
16 made by Full Spectrum to Freddie at the same time of the EORM
17 review. Mr. Tanabe, please turn to page seven.

18 MS. LONDON: Objection, your Honor. Would it be
19 possible to approach for a side bar?

20 THE COURT: All right.

21 (Continued on next page)

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1 (At the side bar)

2 THE COURT: We had gone 15 minutes without side bars.

3 MS. MAINIGI: We were missing you, your Honor.

4 MS. LONDON: This is the presentation that's come up
5 with regard to Cindy Simantel. It's in dispute and this is the
6 presentation that lists the term High-Speed Swim Lane.

7 MS. MAINIGI: This presentation has been admitted.

8 MS. LONDON: We have an objection to showing it to
9 this witness who has no personal knowledge of this. It is
10 highly prejudicial. He testified at his deposition that he had
11 never seen it before. In addition they have a witness, Lauren
12 Biehler who can testify to this, as well as Cliff Kitashima.

13 MS. MAINIGI: Your Honor, Mr. Tanabe testified as the
14 30(b)(6) deponent that Hustle or High-Speed Swim Lane was
15 described to Countrywide -- or was described to Freddie Mac in
16 that presentation. That presentation was made at the same time
17 as that EORM review that we just went over. It was during the
18 exact same site visit that that presentation was made. Your
19 Honor has indicated whether Mr. --

20 THE COURT: So, there are two different questions
21 here. If this is relevant to the area that you're questioning
22 him about, even if he doesn't have knowledge of this, then
23 consistent with what I've allowed the government to do, you can
24 read from it or have him read appropriately.

25 But, given my ruling at the beginning of the trial,

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1 the fact that he gave testimony as a 30(b)(6) witness will not
2 be received.

3 MS. MAINIGI: Understood, your Honor. I'm letting you
4 know at side bar about that.

5 (Continued on next page)

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1 (In open court)

2 BY MS. MAINIGI:

3 Q. Mr. Tanabe, turn to page seven, sir. Actually, I'm sorry,
4 can we go back to the first page, please. The cover page. The
5 title page. Let's go ahead to page seven, please.

6 Mr. Tanabe, could you read the prime subprime mix of
7 business related to Full Spectrum Lending in the July '07 time
8 period, please, sir.

9 A. 14 percent subprime, 86 percent prime.

10 Q. This is information that was shared -- strike that.

11 Could you turn to page 10, please. While we're doing
12 that, Mr. Tanabe, from time to time, when Freddie went on-site
13 for reviews, would lenders make presentations to Freddie on a
14 variety of different issues?

15 A. Yes.

16 Q. They would make presentations to Freddie on underwriting
17 issues or credit issues, is that fair?

18 A. Yes.

19 Q. Would they often use the vehicle of a document like this,
20 what's called a presentation deck to do it?

21 A. Yes.

22 Q. Is that what you would refer to this type of document, a
23 presentation deck? Or what would you call it?

24 A. This is the first time I've seen this document. I'm not
25 sure how it was used.

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1 Q. But a document, PowerPoints like this were presented to
2 Freddie on a regular basis?

3 MS. LONDON: Objection.

4 THE COURT: Sustained.

5 Q. Let's go to page 10. Let's blow up CLUES, please. Could
6 you read, Mr. Tanabe, out loud the information that is
7 contained in this Countrywide presentation on CLUES.

8 A. "CLUES. Countrywide loan underwriting expert system,
9 CLUES, is an automated underwriting system. It has been
10 available for use by all divisions since February 1993. CLUES
11 analyzes credit and financial information, and after applying
12 program specific rules, provides the user with an underwriting
13 decision of accept or a recommendation of refer to an
14 underwriter. 100 percent usage."

15 Q. Thank you, Mr. Tanabe. Let's turn to page 13, please, sir.
16 What is this section entitled, Mr. Tanabe?

17 A. Underwriting controls.

18 Q. Could you read the title of the first bullet underneath
19 that section.

20 A. "Centralized platform moving to central operations
21 fulfillment."

22 Q. We can blow up the bullets underneath that and if you can
23 read those out loud, please, Mr. Tanabe.

24 A. "Supports all FSL production channels, retail branch, new
25 customer acquisition, national sales centers. Central

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1 operations teams are located in three centers, Chandler,
2 Richardson, and Rolling Meadows, and support national sales
3 centers. Regional operations centers being built to support
4 field branch network. Dedicated training staff supports new
5 hire on boarding and continuing education/authority
6 certification. Policy and procedure enhancements are managed
7 and communicated via central bulletin database and notification
8 process."

9 Q. Thank you. Let's turn to page 16, please. Let's blow up
10 the quality control section under underwriting controls.

11 Mr. Tanabe, could you read the first bullet, please.

12 A. "Underwriting authority levels are assigned based upon
13 position and underwriting experience."

14 Q. And the next one, sir.

15 A. "Monthly quality rating is assigned to underwriters, middle
16 and senior underwriting managers, etc."

17 Q. And the next one?

18 A. "Loan files are assigned based upon individual underwriting
19 authority level and file type."

20 Q. And the next, please.

21 A. Authority matrix requires escalation for guideline
22 exceptions based upon signing authority. See appendix."

23 Q. And the next one, sir.

24 A. "Exception approval process completed electronically,
25 capturing approver and specific exception type."

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1 Q. And the next one.

2 A. "Condition sign off process completed electronically and
3 clear to close is issued once all underwriting conditions have
4 been properly cleared. See appendix."

5 Q. You see two references there to the appendix, correct?

6 A. Yes.

7 Q. Then the final bullet, please, sir.

8 A. "Corporate risk management completes regular, random and
9 targeted audits."

10 Q. If you can turn to page 20, please. Page 20 is entitled
11 quality assurance and control. Could you read the bullets
12 under quality assurance out loud, please, sir.

13 A. "Prefunding review of loans within the manufacturing
14 process. Earlier alerts to SOP adherence. Selection of loans
15 after loan has been documents requested for closing. Provides
16 opportunity to correct the missing document prior to funding."

17 Q. Then could you also read the quality control section, the
18 QC section, please, sir.

19 A. "Post-funding review. Corporate completes the random and
20 target audits. Investor kickouts are reviewed for compliance
21 and best practices. Results are reported and used towards
22 making adjustments due to compensation and disciplinary issues.
23 Each finding is categorized SUS, high risk, limited risk, etc."

24 Q. Thank you, Mr. Tanabe. Let's turn now to the appendix that
25 was referenced previously. The first part of the appendix is

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1 at page 26. That's a little tough to read so we'll see how
2 well we can blow that up. Why don't we try to blow up the
3 title first.

4 Could you read that out loud, Mr. Tanabe.

5 A. "FSLD underwriter approval authority level matrix."

6 Q. Are you familiar with documents such as this, Mr. Tanabe?

7 A. I can't read it well enough to answer yes or no.

8 Q. Is it typical for lenders to have matrices that list out
9 who can approve what type of loan?

10 A. Typical --

11 MS. LONDON: Objection.

12 THE COURT: Sustained.

13 Q. In your experience as head of credit -- I'm sorry,
14 Mr. Tanabe. Remind me of your job title again?

15 A. I'm a senior credit director.

16 Q. In your experience as a senior credit director, have you
17 seen documents such as this before?

18 MS. LONDON: Objection.

19 THE COURT: Ground?

20 MS. LONDON: Can we approach?

21 THE COURT: Okay.

22 (Continued on next page)

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1 (At the side bar)

2 THE COURT: I had thought the prior objection was on
3 grounds of lack of personal knowledge and/or foundation.

4 MS. MAINIGI: Me too.

5 MS. LONDON: I thought we had an agreement that this
6 document was only going to be used for purely reading into the
7 record, and now he's starting to testify about, which I thought
8 your Honor had ruled against.

9 THE COURT: So, the objection is to -- let me hear the
10 last question again.

11 (The record was read)

12 THE COURT: What is the objection to that?

13 MS. LONDON: I thought there was a representation made
14 that this document was purely being presented to him to read
15 into the record because he has no personal knowledge. And it
16 is prejudicial.

17 THE COURT: My understanding is it wasn't this
18 document that she was asking about, but was similar documents.
19 But actually --

20 MS. MAINIGI: I was just trying to set the stage for
21 what a type of document like this is, your Honor. It was a
22 purely foundational question.

23 THE COURT: All right. Given now that I understand
24 the whole thing, I'm going to sustain the objection.

25 (Continued on next page)

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1 (In open court)

2 MS. MAINIGI: Alex, can we blow up the title on the
3 side of the document as well, please.

4 Q. Mr. Tanabe, could you read that out loud, please, sir?

5 A. "Underwriting controls, centralized service control,
6 control/underwriting authority matrix."

7 Q. Now, we'll have a challenge trying to read this document a
8 bit together. I promise we will not spend more than a few
9 questions on it. If we could just blow up the very top of the
10 page there, where it says prime and underwriter level one and
11 underwriter level two and so forth. We can just blow up the
12 part that has prime there.

13 Mr. Tanabe, do you see underwriter level one through
14 underwriter level six described at the top of that chart?

15 A. Yes.

16 Q. If we go all the way to the bottle bottom under matrix
17 notes. Let's blow up level one, please. This is underwriter
18 level one. Let's blow that up.

19 Can you read that, Mr. Tanabe, level one, barely?

20 A. Yes. "Associate underwriter with less than one year on job
21 time in the industry. Level one also includes CLUES accept
22 loan specialist branch operations manager."

23 Q. So level one indicates that level one also includes CLUES
24 accept loan specialists branch operations manager, correct?

25 A. That's what this says.

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1 Q. Let's turn to the second page of the appendix, Mr. Tanabe.
2 What is the title of this page, Mr. Tanabe?

3 A. "Underwriting controls, centralized services,
4 quality/condition sign off authority matrix."

5 Q. On the left side, what are the titles?

6 A. Authority criteria, level requirements, restrictions,
7 reason for repeal.

8 Q. Let's blow up the title of the rows all the way across if
9 we can. Okay. So the first row CS condition sign off
10 authority one. What is the title of that row?

11 A. Condition sign off level one, CSO one.

12 Q. And the second row, what is the title of that row?

13 A. Condition -- the second row. Column?

14 Q. I'm sorry. The second column, I apologize, yes.

15 A. Condition sign off level two, CSO two.

16 Q. And the third column, please, sir, what does that say?

17 A. Prime CLUES accept CSO-PCA.

18 Q. Okay. And the fourth column, sir, what does that say?

19 A. Prime CLUES accept/High-Speed Swim Lane, CSO-PCA/HSSL.

20 Q. So the fourth column says prime CLUES accept/High-Speed
21 Swim Lane CSO-PCA/HSSL. Correct?

22 A. Correct.

23 Q. Does the chart include authority criteria for High-Speed
24 Swim Lane in the first row underneath the first block
25 underneath?

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1 A. Right. There is a row that is titled authority criteria.
2 I can't read it.

3 Q. Could you read out loud the authority criteria for the
4 High-Speed Swim Lane.

5 A. "Prime CLUES accept authority plus limited to max 80 LTV,
6 equal to or below 80 LTV, PCA HSSL may clear income related
7 conditions may CTC file. Greater than 80 percent LTV must be
8 submitted to underwriting to clear income related conditions
9 and CTC file."

10 Q. Thank you. Is there a box for level requirements for HSSL,
11 Mr. Tanabe?

12 A. Yes.

13 Q. You can read that out loud, please, sir.

14 A. "Same as prime CLUES accept CSO-PCA. Additional required
15 training, title red flags live on line. New. Flood compliance
16 procedures new. Appraisals new. Stated income reasonability
17 to be developed. Recommendation letter from first VP of ops
18 confirming requirements are met and recommending candidate for
19 authority."

20 Q. Thank you. Then is there a box for High-Speed Swim Lane
21 entitled restrictions.

22 A. Yes.

23 Q. If you can read that out loud, please, sir.

24 A. "Exclusions. EA 1/2/3. Non-delegated mortgage insurance.
25 Flex saver ARM programs. Loan amounts greater than 1 million.

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1 Manufactured housing Edge property type 12. Condominium
2 project approval purchase transaction. Lease hold estate
3 ownership. Trust vesting. Non-arm's length transaction.
4 Lease option. Purchase, CLUES refer. Exceptions any type."

5 Q. Thank you, Mr. Tanabe. Then reason for repeal. Could you
6 read that box, please.

7 A. "Same as prime CLUES accept. Reduction in authority at any
8 level may be based on audit findings. Prefunding QA review of
9 randomly selected files. Post-funding QC review of randomly
10 selected files."

11 Q. Thank you, Mr. Tanabe. You can set that document aside,
12 sir.

13 MS. MAINIGI: May I approach, your Honor?

14 THE COURT: Yes.

15 Q. Mr. Tanabe, DX 60 is a presentation entitled manufacturing
16 quality initiatives dated April 24, 2008. With a Countrywide
17 title on it. Do you recognize this document?

18 A. Yes.

19 Q. Is this document from your files, Mr. Tanabe?

20 A. Yes.

21 Q. Was this presentation made to you by a set of individuals
22 from Countrywide, Mr. Tanabe?

23 A. Yes.

24 MS. MAINIGI: Your Honor, I ask that DX 60 be
25 admitted.

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1 MS. LONDON: No objection.

2 THE COURT: Received.

3 (Defendant's Exhibit 60 received in evidence)

4 MS. MAINIGI: If we can publish the first page,
5 please.

6 Q. Was this an in-person presentation made to you, Mr. Tanabe,
7 do you recall?

8 A. Not 100 percent certain, but I believe so.

9 Q. There were several individuals from Countrywide that came
10 and made the presentation to you, sir?

11 A. I believe so.

12 Q. The presentation is entitled manufacturing quality
13 initiatives, is that right?

14 A. Correct.

15 Q. If you can turn to page two of that document, sir.
16 Entitled overview. Is that right?

17 A. Yes.

18 Q. Could you please read the first bullet for us.

19 A. "In response to market environment deterioration over the
20 past year, CFC has driven not only product change, but a
21 significant effort to improve manufacturing quality."

22 Q. That was one of the things that the Countrywide people told
23 you when they made the presentation to you?

24 A. Yes.

25 Q. If you can read the second bullet, please.

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1 A. "Countrywide significantly updated existing controls and
2 procedures. In addition, it has undertaken new initiatives to
3 address manufacturing quality and to reduce credit, fraud, and
4 collateral valuation risk."

5 Q. That was another point that the Countrywide individuals
6 made to you when they made this presentation to you, sir?

7 A. Yes.

8 Q. The third bullet, please.

9 A. "Particular emphasis is now being placed on ensuring that
10 for any and all programs that rely on borrower's statement of
11 their income, that income is reasonable and consistent with the
12 overall profile presented in the loan file."

13 Q. That was another point that the Countrywide individuals
14 made to you when they presented to you, sir, correct?

15 A. Correct.

16 Q. The last bullet is referring to reasonability of stated
17 income essentially, is that correct?

18 A. That's correct.

19 Q. Stated income loans, Mr. Tanabe, were still investment
20 quality loans, correct?

21 MS. LONDON: Objection.

22 THE COURT: Ground?

23 MS. LONDON: Foundation and vague.

24 THE COURT: Sustained.

25 MS. MAINIGI: I can establish the foundation

DA33BAN1

Tanabe - cross

1 questions, your Honor.

2 THE COURT: Okay.

3 Q. As head of credit, Mr. Tanabe, I take it you were familiar
4 with stated income loans?

5 A. Yes.

6 Q. In fact, Freddie started purchasing stated income loans
7 back to at least the 1990s, is that correct?

8 A. As run through our AUS, correct.

9 Q. It purchased stated income loans from Countrywide, correct?

10 A. Yes.

11 Q. It purchased stated income loans from other lenders also,
12 is that right?

13 A. Correct.

14 Q. Is it fair to say that every large lender had its own
15 stated income type of product?

16 MS. LONDON: Objection.

17 THE COURT: Sustained.

18 Q. Before buying a particular stated income product, Freddie
19 modeled that product, correct?

20 A. We did some analytics to define what parameters the stated
21 income product had to be underwritten to, and based on those
22 parameters, we bought those loans.

23 Q. As a general matter, stated income loans were viewed to be
24 riskier than full documentation loans, correct?

25 MS. LONDON: Objection.

DA33BAN1

Tanabe - cross

1 THE COURT: Overruled.

2 A. I don't -- you can't make that statement as a broad
3 statement that covers all stated income loans. Freddie Mac had
4 a program within its LP that was a stated income that performed
5 better than full doc loans, because of the parameters that were
6 required to meet that program.

7 Q. So there were some stated income products out there that
8 performed better than the full documentation products?

9 A. The LP Accept Plus product.

10 Q. Leaving that one aside, there were certainly a view that
11 stated income -- some subset of stated income loans were
12 riskier than full documentation loans, is that fair?

13 MS. LONDON: Objection.

14 THE COURT: Sustained on vagueness and form.

15 Q. Was it your view, Mr. Tanabe, that certain stated income
16 products were riskier than full documentation products?

17 A. Yes.

18 Q. Did you understand that Freddie priced for that risk,
19 meaning it charged more to buy the stated income product from a
20 lender than the full documentation product?

21 A. In some cases.

22 Q. Did you understand, Mr. Tanabe, that stated income loans
23 were still investment quality loans?

24 MS. LONDON: Objection.

25 THE COURT: Overruled.

DA33BAN1

Tanabe - cross

1 A. They were investment quality as long as the stated income
2 loan was produced in compliance with the guide requirements.
3 Not all were. Some were.

4 Q. You knew Countrywide was selling stated income products to
5 Freddie Mac, correct?

6 A. Correct.

7 Q. In fact, there are contractual provisions between the
8 parties that allowed for that to occur, correct?

9 A. Correct.

10 Q. Is it fair to say that during the time period at issue,
11 Freddie -- you understood that Freddie Mac wanted to purchase
12 stated income products?

13 MS. LONDON: Objection.

14 THE COURT: Ground?

15 MS. LONDON: Relevance.

16 THE COURT: Well, I will allow this question, although
17 I think it is a close question on relevance, but I will allow
18 this question. If counsel is intending to go down a line of
19 questions, then I think we need a side bar.

20 MS. MAINIGI: No, your Honor. I can make that the
21 last one in this area.

22 THE COURT: Okay. You may answer.

23 A. Could you repeat the question, please?

24 Q. Let me try to ask it again. Did you understand,
25 Mr. Tanabe, that Freddie Mac wanted to purchase stated income

DA33BAN1

Tanabe - cross

1 products?

2 A. I characterize our opinion as we did purchase stated income
3 products. I wouldn't characterize our position as wanting to.

4 Q. Freddie Mac and Countrywide contracted annually, is that
5 right?

6 A. For the most part.

7 Q. So, every year, Freddie Mac and Countrywide each made a
8 decision whether they wanted to contract with the other again,
9 is that right?

10 A. Correct.

11 Q. If at any time Freddie Mac was unhappy with the quality of
12 Countrywide's loans or services, it could have chosen to not
13 contract again with Countrywide, correct?

14 A. Correct.

15 Q. It could have chosen to terminate the contract early,
16 correct?

17 A. With due notice.

18 Q. But it could have chosen with due notice to cancel the
19 contract early, correct?

20 A. Correct.

21 Q. But is it fair to say, Mr. Tanabe, that Freddie Mac still
22 buys loans from Bank of America today?

23 MS. LONDON: Objection.

24 THE COURT: Sustained.

25 Q. Does Freddie Mac still have a relationship with Bank of

DA33BAN1

Tanabe - cross

1 America, Mr. Tanabe?

2 MS. LONDON: Objection.

3 THE COURT: Sustained.

4 MS. MAINIGI: No further questions, your Honor.

5 THE COURT: All right. Counsel.

6 MR. HEFTER: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. HEFTER:

9 Q. Good morning, Mr. Tanabe. My name is Michael Hefter and I
10 represent Rebecca Mairone.

11 You have never met Ms. Mairone personally, correct?

12 A. Correct.

13 Q. You've never spoken to her by telephone?

14 A. Correct.

15 Q. You've never corresponded with her by e-mail?

16 A. Correct.

17 Q. Or other type of letter?

18 A. Correct.

19 Q. You've never had any meeting with Ms. Mairone, correct?

20 A. Correct.

21 Q. You were not aware of my statement Ms. Mairone made on
22 behalf of Countrywide to Freddie Mac, correct?

23 A. Correct.

24 MR. HEFTER: I have no further questions, your Honor.

25 THE COURT: Any redirect?

DA33BAN1

Tanabe - cross

1 MS. LONDON: Yes, your Honor.

2 THE COURT: Go ahead.

3 REDIRECT EXAMINATION

4 BY MS. LONDON:

5 Q. Mr. Tanabe, can you pull out DX 43.

6 A. I have it.

7 Q. The information -- is the information contained in this
8 document based on information that Countrywide would have
9 provided to Freddie Mac?

10 A. In part.

11 Q. What else would it have been based on?

12 A. These reviews were completed based off of a review of
13 policies and procedures as provided by Countrywide combined
14 with field testing performed by the auditor.

15 Q. When performing a site review, what kinds of things does
16 Freddie review?

17 A. The typical review includes those areas identified in the
18 summary report section. We also had, I'll say, specialized
19 reviews that deviated from these areas.

20 Q. Can you give some examples of specialized reviews.

21 A. There is really two broad types of specialized review. One
22 is a review of particular function more in-depth because of our
23 concern regarding that function. Like an underwriting function
24 or those functions listed on in the summary section. A second
25 type of different review would be those of I'll say atypical

DA33BAN1

Tanabe - redirect

1 lending practices.

2 Q. Mr. Tanabe, could you also pull out Defendant's Exhibit
3 4036. You testified you're not familiar with this document, is
4 that correct?

5 A. Yes.

6 Q. Even though you're not familiar with it, can you tell what
7 kind of review this was?

8 A. Not with full confidence.

9 Q. Were you present for this presentation?

10 A. No.

11 Q. To your knowledge have you ever used any of the information
12 in this presentation as part of your credit assessments?

13 MS. MAINIGI: Objection.

14 THE COURT: Sustained.

15 Q. You read sections of this presentation out loud today, is
16 that correct?

17 A. Correct.

18 Q. Was any of the information you read out loud today
19 information that you had known prior to reading it?

20 MS. MAINIGI: Objection.

21 THE COURT: Ground?

22 MS. MAINIGI: Vague. "Any of the information."

23 THE COURT: That was the problem with the prior
24 question, but not this one. Overruled.

25 A. Not specific to this review. Some of the information was

DA33BAN1

Tanabe - redirect

1 general industry information that I'm familiar with.

2 Q. Turning back to 43, Defendant's Exhibit 43. Do you have
3 that in front of you?

4 A. Yes.

5 Q. If you can turn to page 13. You see the phrase in the key
6 control section it says "AUS approve loans with typical
7 underwriting conditions"?

8 A. Yes.

9 Q. What are typical underwriting conditions?

10 A. Underwriting conditions are requirements that the
11 underwriter places before the loan can be closed. It could be
12 a request like get an updated paycheck.

13 Q. Do you see the term "junior underwriters"?

14 A. Yes.

15 Q. What is a junior underwriter?

16 MS. MAINIGI: Objection.

17 THE COURT: Overruled.

18 A. I'm not 100 percent sure relative to the reference to
19 junior underwriters in this doc.

20 Q. Is it a phrase that's used at Freddie Mac?

21 A. Infrequently.

22 Q. Do you have an understanding of what a loan specialist is?

23 A. A general one, yes.

24 Q. Is a loan specialist the same as a junior underwriter?

25 MS. MAINIGI: Objection.

DA33BAN1

Tanabe - redirect

1 MR. HEFTER: Objection.

2 THE COURT: Sustained.

3 Q. Have you ever used the term "junior underwriter" to refer
4 to a loan specialist?

5 MR. HEFTER: Objection.

6 THE COURT: Sustained.

7 Q. This section we are looking at is entitled underwriting,
8 correct?

9 A. Yes.

10 Q. What was the purpose of looking at the underwriting as part
11 of this review?

12 A. Proper underwriting is a key component of investment
13 quality.

14 Q. Why is that?

15 A. To ensure that the loan being sold to us was produced in a
16 manner consistent with our requirements.

17 Q. Could you turn to Defendant's Exhibit 60 that you were
18 previously shown. This is a presentation entitled
19 manufacturing quality initiatives, is that correct?

20 A. Correct.

21 Q. Why was Freddie Mac receiving information about
22 manufacturing quality initiatives from Countrywide?

23 MS. MAINIGI: Objection.

24 THE COURT: Ground?

25 MS. MAINIGI: Foundation.

DA33BAN1

Tanabe - redirect

1 THE COURT: Overruled.

2 A. Prior to the presentation of this document, Freddie Mac had
3 had conversations with Countrywide regarding their need to
4 improve their manufacturing quality.

5 Q. What does "manufacturing quality" mean?

6 A. It is an industry term meaning how well they produce the
7 loan. We've used the term NAQ, or the acronym NAQ. NAQ and
8 manufacturing quality are pointing to the same subject.

9 (Continued on next page)

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DA3TBAN2

Tanabe - redirect

1 BY MS. LONDON:

2 Q. Does manufacturing quality include how a loan is
3 originated?

4 A. A large part.

5 Q. Does it include underwriting?

6 A. Yes.

7 Q. You testified that certain stated income loans are riskier
8 than other loans, is that correct?

9 A. Yes.

10 Q. You stated income loans require -- do they require
11 underwriting?

12 A. Yes.

13 Q. And do they need to be underwritten correctly?

14 A. To be eligible for sale.

15 MS. MAINIGI: Objection.

16 THE COURT: I think it's vague, sustained.

17 Q. Is the quality of underwriting important with regard to
18 stated income loans?

19 MR. HEFTER: Objection.

20 THE COURT: Overruled.

21 A. More so than full document loans.

22 Q. Is it important for a qualified personnel to underwrite
23 stated income loans?

24 A. Yes.

25 Q. Why is that?

DA3TBAN2

Tanabe - redirect

1 A. It's harder to make the judgment of income adequacy because
2 there's not a document that proves out what income a borrower
3 has made. It's based on a reasonableness test as opposed to
4 documentation.

5 Q. If stated income loans are not properly underwritten, is
6 there an increased risk they won't be investment quality?

7 MR. HEFTER: Objection.

8 MS. MAINIGI: Objection.

9 THE COURT: Ground?

10 MR. HEFTER: Leading, hypothetical, lack of
11 foundation.

12 MS. MAINIGI: Speculation.

13 THE COURT: I think given his position and knowledge
14 this is calling for a comment on his experience. With that
15 understanding, I will allow the question.

16 A. Could you repeat the question, please?

17 Q. Sure. If stated income loans are not properly
18 underwritten, is there an increased risk they won't be
19 investment quality?

20 THE COURT: In your experience.

21 THE WITNESS: In my experience.

22 A. In my experience, my answer would be yes.

23 Q. Were you ever told that Full Spectrum Lending was
24 processing stated income loans without using underwriters?

25 MR. HEFTER: Objection, your Honor.

DA3TBAN2

Tanabe - redirect

1 THE COURT: Ground?

2 MR. HEFTER: Hearsay.

3 THE COURT: No.

4 MS. MAINIGI: I have another objection.

5 THE COURT: I assume it's intended to get a
6 non-hearsay response.

7 MR. HEFTER: Thanks.

8 MS. MAINIGI: Your Honor, my objection is it assumes
9 facts that are not in evidence.

10 THE COURT: Overruled.

11 A. Could you repeat the question?

12 Q. Sure. Were you ever told that Full Spectrum Lending was
13 processing stated income loans without using underwriters?

14 A. Not until my deposition.

15 Q. And that's your deposition in this case, is that correct?

16 A. Yes.

17 Q. Could you turn back to Defendant's Exhibit 43 one more
18 time. If could you turn to page 16, please. Do you see a
19 section at the bottom entitled quality control?

20 A. Yes, I do.

21 Q. And what is the ranking for quality control that's listed?

22 A. Marginal.

23 Q. What does a marginal ranking mean?

24 A. Less than satisfactory.

25 Q. Could you read for us the description after rating

DA3TBAN2

Tanabe - redirect

1 justification?

2 A. BORM made multiple requests to review copies of
3 post-funding quality control management reports. CHL declined
4 to provide the information. The management reports requested
5 are key to validating representations management provided
6 during interviews. Without this information, BORM is unable to
7 validate satisfactory controls exist throughout the entire
8 quality control process, and therefore rates the quality
9 control as marginal.

10 Q. Were you involved in any of the requests for quality
11 control reports from Countrywide?

12 A. Not directly.

13 Q. Were you indirectly involved?

14 A. I don't remember if I was indirectly involved.

15 Q. Is Countrywide required to turn over to Freddie Mac --

16 MR. HEFTER: Objection.

17 MS. MAINIGI: Objection.

18 MR. HEFTER: Calls for a legal conclusion.

19 THE COURT: Sustained.

20 Q. In your role as a senior credit director, do you review
21 post-funding quality control funding reports?

22 A. Whose?

23 Q. From Countrywide.

24 A. No.

25 Q. Is there a group at Freddie Mac that's responsible for

DA3TBAN2

Tanabe - redirect

1 reviewing these management reports?

2 A. The core group uses these reports in the production of
3 their review.

4 Q. The core group, you said?

5 A. Yes. The EORM. Core is the new name for the same group.

6 Q. We talked a little bit about site reviews in general, is
7 that correct?

8 A. Yes.

9 Q. Was part of the purpose of a site review of a lender to get
10 a full picture of the credit quality of the lender?

11 MS. MAINIGI: Objection.

12 THE COURT: Ground?

13 MS. MAINIGI: Leading.

14 THE COURT: Well, it is arguably leading, but this is
15 a witness who has already shown that he is not affected by
16 leading, so overruled.

17 A. Could repeat the question, please?

18 Q. Sure. Was part of the purpose of the site reviews of
19 lenders to get a full picture of the lender's credit quality?

20 A. I think you're talking about the external operating, the
21 EORM reviews. We had multiple types, this being one. We also
22 did site reviews for QC. Just relative to EORM, it was
23 intended to give a broad picture on everything, not just credit
24 but everything but relative to process. It was a process
25 pointed review.

DA3TBAN2

Tanabe - redirect

1 Q. And process includes the manufacturing quality that we've
2 discussed?

3 A. Yes.

4 Q. And that includes underwriting?

5 A. Yes.

6 Q. And underwriting is relevant to credit quality, is that
7 correct?

8 A. Yes.

9 Q. Did the site visits that we have been discussing, did they
10 include a loan review?

11 A. It included file testing. I would stop short of calling it
12 a full loan review because it is very specific relative to
13 specific functions.

14 Q. Can you explain that a little bit more?

15 A. Sure. In the summary report you will see the various
16 categories. A file contains a bunch of information, including
17 the underwriting information. The file testing that these
18 folks did was on the underwriting section of the file, not
19 necessarily the complete file.

20 Q. Thank you. Was the file review that was done relating to
21 underwriting an important part of assessing the underwriting
22 quality?

23 A. The integrity of the underwriting process is the way I
24 would phrase their purpose, assessing the integrity of the
25 underwriting process.

DA3TBAN2

Tanabe - redirect

1 Q. What do you mean by the integrity of the underwriting
2 process?

3 A. Do they have the right people fully trained placed in an
4 environment where good decisions could be made, good judgment
5 and decisions could be made.

6 Q. Is it important in doing a file review that we have just
7 been discussing that a lender be forthcoming and truthful in
8 providing the information?

9 MR. HEFTER: Objection.

10 THE COURT: Ground?

11 MR. HEFTER: Leading, your Honor.

12 THE COURT: Well, that one is really fairly blatant
13 leading, although it also suffers from the platitudinous
14 quality. But I suppose a non-leading question would be is it
15 important in doing it -- is it more important in doing a file
16 review whether the lender be truthful or untruthful?

17 MS. MAINIGI: If you phrase it that way, your Honor, I
18 have no objection to it.

19 MR. HEFTER: I'll withdraw.

20 THE COURT: Anyway, you may answer the original
21 question. Is it important in doing a file review that a lender
22 be forthcoming and truthful? Yes or no.

23 THE WITNESS: Clearly, yes. The rep and warrant model
24 is built on that.

25 THE COURT: I'm so shocked to hear that answer.

DA3TBAN2

Tanabe - redirect

1 BY MS. LONDON:

2 Q. In assessing the credit risks of loan origination
3 processes, are there specific aspects of the loan origination
4 process that would be of particular importance to you?

5 A. The answer is yes, and it varies based on how the
6 underwriting is completed. In situations where an automated
7 underwriting system is used, in my mind, a critical piece is
8 how accurate is the information that's placed into the AUS. If
9 inaccurate information is placed in the AUS, it invalidates the
10 AUS's risk classification because it was based on inaccurate
11 information. So in my mind that's key. In terms of manual
12 underwriting, it becomes -- it's all important, the assessment
13 of the accuracy of the information and then the judgment as to
14 what that information leads the underwriter to conclude
15 relative to making the loan or not.

16 Q. Focusing on the automated underwriting piece of your
17 answer, you talked about the accuracy of the information, is
18 that correct?

19 A. Correct.

20 Q. What are steps that lenders take to ensure that the
21 information going into the AUS is accurate?

22 MS. MAINIGI: Objection.

23 THE COURT: Counsel, come to the side bar.

24 (Continued on next page)

DA3TBAN2

Tanabe - redirect

1 (At side bar)

2 THE COURT: How much longer to you have on this
3 witness?

4 MS. LONDON: Fifteen minutes.

5 THE COURT: You're doing -- that's an awful lot of
6 redirect.

7 MS. MAINIGI: I didn't hear what you said.

8 MS. LONDON: Fifteen minutes.

9 THE COURT: I'm going to give the jury their
10 mid-morning break because I don't think they can wait for that,
11 I thought we might be able to finish this witness, and then
12 we'll take up any objections at that time.

13 MS. LONDON: Thank you.

14 (Continued on next page)

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DA3TBAN2

Tanabe - redirect

1 (In open court)

2 THE COURT: Ladies and gentlemen, we're going to give
3 you your mid-morning break at this time. We'll take 15
4 minutes.

5 (Jury not present)

6 THE COURT: Please be seated.

7 So what was the objection to the last question?

8 MS. MAINIGI: Your Honor, I believe the question was
9 something to the effect of what are the steps that lenders take
10 to ensure accuracy of what is going into the AUS, and it's a
11 foundational objection.

12 THE COURT: If that was the question, then I agree
13 with that, it lacks foundation.

14 Now I think the only letter briefed matter that is
15 complete and ready for decision is the question of whether the
16 government can introduce evidence that Countrywide made
17 approximately \$165 million from selling Hustle loans to Fannie
18 Mae and Freddie Mac. So let me hear any oral argument starting
19 with defense counsel.

20 MR. SINGER: Thank you, your Honor, Greg Singer for
21 the banks.

22 The government has submitted a response to our letter.
23 I won't repeat what's in our letter. But the one thing that
24 was most striking to me about the government's letter is that I
25 didn't hear -- didn't see anything defending the ability to put

DA3TBAN2

Tanabe - redirect

1 a number, an amount of gain that the banks --

2 THE COURT: Their point is -- they have two prongs to
3 their claim that it's relevant, one is motive and one is
4 evidence of intent. With respect to motive, how can the jury
5 assess whether the motive is a strong motive or a weak motive
6 if it doesn't know the magnitude?

7 MR. SINGER: Your Honor, to calculate an amount going
8 to motive, the jury has no context to understand that amount.
9 That's going to open up the door to a lot of responsive
10 evidence about how 165 million plays into the overall profits,
11 revenues of the bank. They don't have any context for that.

12 In any event, the fact of gain doesn't show motive
13 either. Even if we were not talking about a dollar figure,
14 your Honor, even the mere fact of gain or lack thereof from
15 selling loans is not probative of motive. Countrywide was in
16 the business of selling loans to make a profit, and there is
17 certainly nothing wrong with that.

18 THE COURT: The government's contention is at a point
19 in time when the previous kinds of loans that they had been
20 selling was declining and coming under considerable jeopardy,
21 Countrywide attempted to repair that gap, at least in part, by
22 passing off, on the government's views, better quality loans
23 that in fact were still suspect in numerous ways. And to show
24 that this wasn't just something that was immaterial or they did
25 accidentally on occasion here or there, they want to show, for

DA3TBAN2

Tanabe - redirect

1 both motive and intent purposes, the actual magnitude of what
2 was sold. And that may open the door to whether that magnitude
3 was really that important in the context of the bank or this
4 department of the bank or anything else like that. I think
5 there were already words to that effect in Mr. Sullivan's
6 opening statement, if I'm correctly recollecting. I don't know
7 whether it opens that door or not, but I don't see why it's not
8 probative of both motive -- both the strength of the motive and
9 the nature of the intent.

10 MR. SINGER: Your Honor, there's nothing to separate
11 the motive to profit from selling these loans from the motive
12 to profit from selling any loans.

13 THE COURT: That's a little bit like saying if I sold
14 you -- if I'm a car dealer and I sell you good cars, I have no
15 motive to sell you lemons and pass them off as good cars. That
16 doesn't make any sense at all.

17 MR. SINGER: But your Honor, we're not talking
18 about -- I think it's a slightly different situation.

19 THE COURT: Why?

20 MR. SINGER: We're looking -- take the situation in a
21 pleading of motive and opportunity in a securities case, for
22 example, the Second Circuit has held that you can plead a
23 plausible case of intent in a securities case by pleading
24 motive and opportunity. But what does motive and opportunity
25 mean in the corporate setting? It is not enough simply to

DA3TBAN2

Tanabe - redirect

1 plead that a corporate officer or corporate officers in general
2 had motives to increase the profits of their company by making
3 fraudulent statements, because the motive to increase profits
4 by making fraudulent statements is no different in kind --

5 THE COURT: That's a totally different thing. The
6 background on that is that the law normally requires that proof
7 of intent be pled with particularity. If though rule 9(b)
8 doesn't require it, both the PSLRA and also case law in the
9 Second Circuit says you have to come forward with enough
10 evidence from which a reasonable person could infer a serious
11 likelihood of fraudulent intent. The Second Circuit then
12 starting, about maybe 60, 70 years ago, if not earlier, carved
13 out an alternative to that, because it's extremely difficult to
14 make that kind of showing at the time you're pleading your
15 initial complaint, and they carved out the motive and
16 opportunity alternative. One, incidentally, that I don't
17 believe has ever been approved by the Supreme Court, but that's
18 a different question.

19 The reason motive and opportunity were held to very
20 high standards of the sort you're now describing in that
21 context was because it was a substitute for the equally high
22 pleading requirement that had to be made in a fraud -- in a
23 securities fraud case. It has nothing to do with the much
24 lower threshold for admissibility of evidence under Rules 401
25 and 402 as relevant to the issue of intent and motive. It's an

DA3TBAN2

Tanabe - redirect

1 apples and oranges comparison, or maybe in light of my prior
2 example, it's an apples and lemons comparison.

3 MR. SINGER: Your Honor, your statement of the law of
4 how we got to motive and opportunity in securities cases I
5 entirely agree with, and I was not suggesting that standard is
6 what controls here. What I was trying to express is in
7 discussing motive in those cases, I think the reasons why the
8 courts -- what the courts have said in considering motive to
9 profit are illuminating here, because the courts have said it
10 does not show anything out of the ordinary that a corporate
11 officer has a motive to profit. It does not show a fraudulent
12 motive.

13 And here we have a situation where --

14 THE COURT: All right, go ahead, please. I didn't
15 mean to interrupt, go ahead.

16 MR. SINGER: I think that for this to be relevant, and
17 particularly for it to be not significantly more prejudicial
18 than probative, there has to be something to the idea of a
19 profit motive, and particularly this dollar figure of profit
20 motive, that shows more than that the Countrywide FSL
21 executives had different motives or intents than any other
22 business people in the world. Because there can't be any
23 dispute, and we're not disputing that the FSL executives wanted
24 to make a profit from selling -- for their company from selling
25 loans to Fannie and Freddie. That's undisputed.

DA3TBAN2

Tanabe - redirect

1 THE COURT: First of all, I don't see the prejudice.
2 What you're really claiming is prejudice is a relevant fact
3 issue, which is materiality and strength of motive. The
4 government in their letter points out, and this is what I was
5 referring to a minute ago, but I see is now specifically cited
6 in their letter, that in bank counsel's opening he refers to,
7 "94 branches, almost 200,000 loans that they pushed through
8 their system, 2007, to the extent of \$31 billion worth."

9 So you have that argument to make to the jury,
10 assuming you put in the appropriate evidence -- this was
11 opening statement, but assuming the evidence comes in, how
12 could this possibly have motivated them when they're selling
13 this huge number of loans? That's an argument that the jury
14 will assess, but it's not -- it doesn't render this premise
15 prejudicial and doesn't render this -- if anything, your
16 evidence pulls the sting from any conceivable claim of
17 prejudice and doesn't render it irrelevant.

18 MR. SINGER: We can try to take the sting away, as
19 Mr. Sullivan did in the opening statement, by saying what we
20 will say in response to it, but frankly we shouldn't have to.

21 THE COURT: I don't see the prejudice. I'm sorry, the
22 prejudice under the rule doesn't come from, in effect, the
23 probative value of the evidence. If it was -- I mean all
24 you're saying is because it's a large number of dollars than
25 most jurors experience, but when they hear the much larger

DA3TBAN2

Tanabe - redirect

1 number of dollars involved they put it in context. I don't
2 really think there's any prejudice.

3 MR. SINGER: Your Honor, we hope they can put it in
4 context. We think it's difficult, when they hear large numbers
5 like that, to not be shocked by the number 165 million not in
6 overall proportion.

7 But to move to a couple other points that I think are
8 also persuasive here, your Honor has already excluded evidence
9 of a couple of other points that I think are analogous here,
10 one is the evidence of loss, and the other is evidence of
11 individual compensation.

12 THE COURT: The loss is a totally different question.
13 I excluded that on a number of grounds, but just, for example,
14 on the ground that there was in the marketplace -- volatile
15 marketplace where this all occurred, there was no way that a
16 jury could assess the meaning of loss. It would be entirely
17 speculative. That's clearly not true of gain.

18 MR. SINGER: That assumes, your Honor, that every
19 dollar that Countrywide received from selling a HSSL loan was a
20 dollar it would otherwise not have received. And I don't think
21 that's a fair assumption because I don't think there's any
22 dispute that many, if not most, of the HSSL loans were
23 perfectly good quality loans. Perhaps they weren't
24 underwritten the way the government believes they should have
25 been.

DA3TBAN2

Tanabe - redirect

1 THE COURT: If in fact these were loans that -- I mean
2 this goes again to the question of materiality, which is
3 obviously a disputed issue in this case, but if these were
4 loans that the bank either -- excuse me, that Freddie Mac and
5 Fannie Mae either would not have purchased if they had known
6 the facts, or at least would have considered that as important
7 in the mix in determining whether or not to purchase, then the
8 fact that they did purchase is a dollar gained that they
9 otherwise would not have.

10 MR. SINGER: Put another way, hypothetically, if the
11 loans had been -- if an underwriter has been used on the same
12 pool of loans that the government claims, somebody entitled
13 "underwriter" instead of a "loan specialist," that underwriter
14 would have approved 99 percent of the same loans or 55 percent
15 of the same loans, then one cannot say that the whole \$165
16 million is a gain. So I think it's similar to your Honor's
17 view of loss.

18 THE COURT: Talking about speculation, if your
19 argument is if some hypothetical underwriter, who is never part
20 of the approval of these loans, had in fact been asked to
21 approve these loans, he or she would have approved these loans,
22 ergo the fact that it wasn't an underwriter means that that
23 fact of it not being an underwriter is immaterial. I have very
24 great doubts about whether you're going to get that into
25 evidence at all.

DA3TBAN2

Tanabe - redirect

1 MR. SINGER: Your Honor --

2 THE COURT: But assuming you got it into evidence, I
3 don't think it takes away from the fact this is a genuine
4 disputed issue for the jury.

5 MR. SINGER: Your Honor, the government's claim is
6 that every dollar received from HSSL loan is some kind of ill
7 gotten gain and profit motive. I think what is speculative is
8 that proposition, because there is no evidence that we have
9 heard that all of the HSSL loans were bad, or even --

10 THE COURT: I come back to my -- you want to dismiss
11 it, my car analogy. So someone is a successful car salesman,
12 and he sells a lot of good cars, and then he also sells a lot
13 of lemons, which he disguises fraudulently as good cars, and
14 you're saying that because he sells lots of good cars he had no
15 motive to also gain additional money by selling lemons
16 disguised as good cars. You're free to make that kind of
17 argument to the jury, but I suggest that it's not a basis for
18 my keeping the evidence of his motive to sell the lemons
19 disguised as good cars out of the case.

20 MR. SINGER: Going back to my prior point, that
21 assumes that every agent that sells a loan is a lemon car.

22 THE COURT: No, I set it up quite to the contrary.
23 The agent is selling both good cars and lemons.

24 MR. SINGER: But the \$165 million is all the cars,
25 it's not just the lemons.

DA3TBAN2

Tanabe - redirect

1 THE COURT: Not on the government's theory. The
2 government's theory is these are all bad loans, or a vast
3 percentage of them are.

4 MR. SINGER: In that case, I suggest there's no
5 evidentiary support for the government's theory.

6 THE COURT: We just had a witness testify that what,
7 over 50 percent were.

8 MR. SINGER: But the 165 million is a hundred percent.

9 THE COURT: So you'll say ladies and gentlemen, it's a
10 measly 80 million.

11 MR. SINGER: But the larger point that I'm trying to
12 make, your Honor, is you can't quantify precisely what the
13 profit is and correlate that to some motive of profitability.

14 THE COURT: I actually don't think that's true. If I,
15 as I must for these purposes, take all reasonable inferences
16 favorable to the government that are a reasonable juror could
17 infer, if the government contends that, say, 53 percent of the
18 loans were bad, and the total profit was 165 million, what's
19 53 percent of 165, or at least that's a close enough
20 approximation that a jury could infer whether that's enough to
21 cause the salesperson to sell lemons.

22 MR. SINGER: At a minimum they should be saying
23 whatever 53 percent of 165 million is.

24 THE COURT: Whenever this comes in, you'll have
25 cross-examination.

DA3TBAN2

Tanabe - redirect

1 All right. Anything else?

2 MR. SINGER: Thank you.

3 THE COURT: OK. I will allow the government to
4 introduce evidence of the profit.

5 MR. HEFTER: Your Honor, this is a nice launching
6 point for me to seek your Honor's guidance and permission under
7 your rules for any anticipated Rule 50 motions.

8 THE COURT: Yes, so when the government finishes its
9 case, which judging from the matter in which it's questioning
10 the instant witness, may be 2019 or so, we will hear
11 immediately any motions at that time.

12 MR. HEFTER: And would your Honor prefer seeking leave
13 to put in a written submission?

14 THE COURT: You're welcome to do it in advance, but
15 I'm not going to hold things up. I will rule right then and
16 there after hearing oral argument. If you feel now that you
17 have a basis for saying they haven't shown X or haven't shown Y
18 and you want to put in a letter brief, sounds like they might
19 finish tomorrow, although I'm not too optimistic, but sure, I
20 will accept those briefs. Not tons of briefs.

21 MR. HEFTER: I understand.

22 THE COURT: One five-page, single-spaced letter.

23 MR. SINGER: We would also like to.

24 THE COURT: Yes.

25 MS. MAINIGI: Your Honor, I have the case law you

DA3TBAN2

Tanabe - redirect

1 requested. I will give it to Mr. King after.

2 THE COURT: Yes, thank you very much.

3 MS. NAWADAY: Your Honor, and we have a responsive
4 letter brief on the Hustle.

5 THE COURT: Yes. This is so exciting.

6 And did the government have any citations they wanted
7 to bring to my attention on the issue that defense counsel
8 just -- looks like some fairly weak case law. There are two
9 decisions by -- well, there's a decision, there are two --
10 there's a decision by United States magistrate judge in
11 Massachusetts, that's certainly well worth looking at, and
12 there's a decision by Judge -- the late Judge Leisure of this
13 Court, who just recently passed away, who was certainly one of
14 the ornaments of this Court, a wonderful judge and a wonderful
15 human being, and I will certainly take that seriously, but then
16 we're reduced to two decisions by Judge Rakoff. Couldn't do
17 any better than that?

18 MS. MAINIGI: We couldn't. That's the best we could
19 do.

20 THE COURT: Did you give a copy to the government?

21 MS. MAINIGI: Yes, this morning.

22 THE COURT: So I want to decide this by the end of
23 today if possible.

24 MR. ARMAND: Your Honor, we can provide some citations
25 later today.

DA3TBAN2

Tanabe - redirect

1 THE COURT: OK. Very good. Let's take five minutes
2 and we'll bring the jury back.

3 (Recess taken)

4 (Jury present)

5 MS. LONDON: May I proceed?

6 THE COURT: OK, counsel.

7 BY MS. LONDON:

8 Q. Mr. Tanabe, as part of your role as senior credit director
9 at Freddie Mac, are you responsible for assessing the
10 manufacturing quality of lenders?

11 A. I wasn't responsible for performing the review that led to
12 the NAQ rate, which is the indication of manufacturing quality.
13 I was a user of the information that was created by our own
14 records.

15 Q. As part of your role, did you make a credit determination
16 about lenders?

17 A. I was part of a group that made the credit decisions on
18 lenders, yes.

19 Q. Would the qualifications of personnel performing
20 underwriting tasks be important to you as part of making the
21 credit determination about a lender?

22 MS. MAINIGI: Objection.

23 THE COURT: Overruled.

24 A. Having qualified staff is a requirement of Freddie Mac
25 eligibility. It's something that is on the application form.

DA3TBAN2

Tanabe - redirect

1 It would be a concern to me. There are others within Freddie
2 Mac that are more expert in making the judgment as to whether
3 person A is qualified or not, but it is important to me.

4 MR. HEFTER: Objection, your Honor, I will move to
5 strike the middle sentence.

6 THE COURT: I understand what you're saying but I will
7 let it stand.

8 Q. Would the qualifications of personnel performing
9 underwriting tasks at a lender have been a factor in your
10 recommendations regarding purchasing loans from that lender?

11 MR. HEFTER: Objection.

12 MS. MAINIGI: Objection, your Honor.

13 THE COURT: Overruled.

14 MR. HEFTER: Your Honor, could I make a cumulative
15 objection as well?

16 THE COURT: Pardon?

17 MR. HEFTER: Could I make a cumulative objection as
18 well?

19 THE COURT: Cumulative objection?

20 MR. HEFTER: I think we have heard this from this
21 witness already.

22 THE COURT: I see. OK. I wasn't sure whether you
23 were saying asked and answered or saying you wanted to object
24 repeatedly. I will overrule that. But I am concerned,
25 counsel, that we're getting a little bit repetitive here. So

DA3TBAN2

Tanabe - redirect

1 bear that in mind. But you may answer the question.

2 A. The competency of the people making loan decisions is
3 clearly a factor. Incompetent people will create ineligible
4 loans which will then lead to higher NAQ rates.

5 Q. Would the independence of these personnel have also been a
6 factor?

7 MS. MAINIGI: Objection, your Honor.

8 MR. HEFTER: Objection.

9 THE COURT: Sustained.

10 Q. Would the speed at which a loan was being processed at a
11 lender have been a factor in your recommendation regarding
12 purchasing loans from a lender?

13 MS. MAINIGI: Objection, your Honor.

14 MR. HEFTER: Objection.

15 THE COURT: I'm going to allow that. You may answer.

16 A. Could you repeat the question, please?

17 Q. Sure. Would the speed at which loans had been processed
18 have been a factor in your recommendations regarding purchasing
19 loans from a lender?

20 A. My number one consideration in this area is how well the
21 loan was underwritten. Did it meet the guide terms or not.
22 Failure to meet the guide terms could be caused by any number
23 of different factors, including any quota in terms of the
24 number of accounts or number of loans one had to process. So
25 in the end, it's not necessarily speed, it's the quality that

DA3TBAN2

Tanabe - redirect

1 would be the consideration.

2 Q. You testified yesterday that you had regular communications
3 with Countrywide representatives in the 2007 to 2008 time
4 period, correct?

5 A. Correct.

6 Q. Did anyone at Countrywide in the 2007 to 2008 time period
7 ever tell you about a new loan origination process in Full
8 Spectrum Lending division for prime loans?

9 MS. MAINIGI: Objection.

10 THE COURT: Ground?

11 MS. MAINIGI: Well, first, foundation. I don't think
12 we established that he had conversations with people at Full
13 Spectrum. And second, I do think it's cumulative of what was
14 done yesterday.

15 MR. HEFTER: And your Honor, I would add relevance.

16 THE COURT: Well, the foundation objection is
17 overruled because assuming hypothetically, which may or may not
18 be the case, that this was a basis for an obligation to say
19 something and no one said anything, hypothetically, therefore
20 the fact that he did not have a conversations with anyone would
21 not be a foundational objection.

22 In terms of cumulative of what was said yesterday, I
23 think that's fair. Sustained.

24 Q. Did anyone at Countrywide in 2007 or 2008 ever tell you
25 about a loan origination process called the High-Speed Swim

DA3TBAN2

Tanabe - redirect

1 Lane?

2 MS. MAINIGI: Objection, your Honor, that exact
3 question was asked yesterday.

4 MR. HEFTER: Objection.

5 THE COURT: Sustained.

6 Q. You mentioned yesterday that the contracts with lenders of
7 Freddie Mac contains repurchase language, is that correct?

8 A. Yes.

9 Q. Does the fact that Freddie Mac could attempt to repurchase
10 loans from lenders in any way change the requirement that loans
11 be investment quality?

12 MR. HEFTER: Objection.

13 THE COURT: Overruled.

14 A. No.

15 MS. LONDON: I have no further questions.

16 THE COURT: All right.

17 MS. MAINIGI: Nothing, your Honor.

18 MR. HEFTER: Nothing, your Honor.

19 THE COURT: Thank you so much. You may step down.
20 Please call your next witness.

21 MR. ARMAND: The government calls Dr. Charles Cowan.

22 THE COURT: And would someone like to come up and get
23 all those materials that are on the witness stand.

24 (Continued on next page)

25

DA3TBAN2

Cowan - direct

1 CHARLES COWAN,

2 called as a witness by the Plaintiff,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ARMAND:

6 DEPUTY CLERK: State your name and spell it slowly for
7 the record.

8 THE WITNESS: Charles Douglas Cowan, C-O-W-A-N.

9 THE COURT: Counsel.

10 BY MR. ARMAND:

11 Q. Good morning, Dr. Cowan.

12 A. Good morning.

13 Q. Dr. Cowan, what is your profession?

14 A. I'm statistician and economist.

15 Q. Can you please describe your educational background?

16 A. Sure, I have a doctorate in mathematical statistics, I have
17 a master's degree in economics with a specialization in
18 econometrics and a bachelor's degree in economics.

19 Q. Dr. Cowan, could you explain generally to the jury what a
20 statistical sampling is and how it's used?

21 A. Sure. Statistical sampling is a method that's used when
22 you want to know something about a population, and in
23 particular a large population, you can't look at the whole
24 population, it may be too large, so you look at a sample. And
25 from the sample, you extrapolate results to the population and

DA3TBAN2

Cowan - direct

1 you try to find out something about the population.

2 So as an example, the government publishes information
3 about the inflation rate. Every month there's a new report
4 from the Bureau of Labor Statistics on how much inflation has
5 gone up or gone down. That's actually collected by
6 interviewing people throughout the United States where a sample
7 of households is drawn, interviews are conducted by people at
8 the Census Bureau, they ask questions about what did you buy,
9 how much did you pay for it, and then that information is
10 summarized and used to determine how much prices have gone up
11 and how much prices have gone up relative to what you usually
12 buy. In addition to estimating how much prices have gone up,
13 that same survey can be used to estimate how much prices have
14 gone up for cars, for food, for housing. So when you do a
15 survey, you don't do it just for one purpose, you try to get
16 multiple statistics; get a lot of utility out of doing the
17 survey, it's an expensive process.

18 A second example is one that you will be familiar
19 with, which is political polling. So if you watch CNN in the
20 mornings when they have reports, you will see sometimes at the
21 bottom of CNN it says CNN/ORC polls. ORC stands for Opinion
22 Research Corporation. So CNN isn't doing the survey, Opinion
23 Research is doing the survey. And what they do is they draw a
24 sample of a thousand households around the country, they call
25 them, they ask their opinions about whatever today's subject

DA3TBAN2

Cowan - direct

1 is. Most frequently what you'll see is political polling where
2 in the last election they would have asked the question like
3 are you more likely to vote for Mitt Romney or Barack Obama.
4 And there again, the survey is conducted in such a way that
5 they get not only that information, but they ask why would you
6 vote for one or the other. And then it's divided up so that
7 you can determine what the rate is that people are going to
8 vote for Romney or Obama for males, for females, by religious
9 groups, by different parts of the country, and so on. So they
10 get some idea about how much diversity there is in who people
11 are going to vote for.

12 Now I happen to know about that one, just like I knew
13 with the consumer expenditure survey, because when I was at the
14 Bureau of Census I helped design the consumer expenditure
15 survey and was I chief statistician for opinion research and I
16 did the same kind of work there drawing samples so we could
17 measure what do people think.

18 (Continued on next page)

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DA33BAN3

Cowan - direct

1 Q. Why don't we talk about your professional background,
2 Dr. Cowan. Could you take the jury briefly through your
3 professional experience with regard to the area of statistical
4 sampling.

5 A. Sure. I actually started at the University of Michigan
6 working for the survey research center. Then I went to Oregon
7 State University where I was the director of -- the manager of
8 the survey research center. From there I went to the Census
9 Bureau, and I held different positions, but one of the
10 positions I held was I was chief of survey design branch. I
11 was responsible for the design of a number of different surveys
12 that you see published and reported on in the papers. In
13 addition, I was responsible for the design of the evaluation of
14 the decennial census. How many people are missed, how many
15 people are counted. What is the differential for different
16 areas in different parts of the country.

17 After I did that, I traveled around the world and
18 helped different -- worked in different countries helping them
19 with their censuses. I published a book on the evaluation of
20 censuses and housing surveys.

21 After I left the Census Bureau, I was the first chief
22 statistician for the Department of Education where we measured
23 different things about school systems, about students,
24 teachers, principals, what are kids learning, and I'm still
25 involved somewhat with the Department of Education doing

DA33BAN3

Cowan - direct

1 research for them on their sample designs and how they
2 determine what kids are learning and how it differs from
3 country to country, from state to state.

4 After I was chief statistician for the Department of
5 Education, for a while I was chief statistician for Opinion
6 Research Corporation.

7 Then I came back to the government during the last
8 banking crisis in the late 1980s, early 1990s, where I was the
9 chief statistician for the Resolution Trust Corporation and for
10 the Federal Deposit Insurance Corporation. I designed surveys
11 to determine how much of a loss there was going to be to the
12 taxpayer in terms of bad loans, closing banks, things that are
13 similar to what are being discussed in this case.

14 Q. I'm sorry to interrupt you. Can you explain what the
15 Resolution Trust Corporation is and the FDIC?

16 A. Sure. Resolution Trust Corporation is actually a federal
17 agency. In the late 1980s, after there were so many failed
18 savings and loans --

19 MR. HEFTER: May we approach?

20 THE COURT: Sure.

21 (Continued on next page)

DA33BAN3

Cowan - direct

1 (At the side bar)

2 THE COURT: I'm not quite sure why you needed to
3 approach because if you had said the single word "objection," I
4 would have sustained it.

5 MR. HEFTER: Thank you, your Honor.

6 THE COURT: This is much too much. We need to get a
7 general sense of his expertise. We don't need the history of
8 some other organization or any other.

9 MR. ARMAND: I understand.

10 THE COURT: Stuff of that kind.

11 (Continued on next page)

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DA33BAN3

Cowan - direct

(In open court)

Q. Dr. Cowan, do you have experience applying statistical sampling techniques to mortgage loans?

A. Yes.

Q. Can you briefly explain that.

A. Sure. Well, first at the Resolution Trust Corporation, we sampled thousands of mortgage loans to determine what happened to the loans, what their value was. Same thing when I was at the Federal Deposit Insurance Corporation.

After that I went -- I had a couple more jobs, then I started my own company where I was drawing samples of loans for banks and looking at the results of the sampling and the valuation of the -- what happened to the loans to determine whether the models that were used by these banks were solid, were they reliable, were they telling the banks what they needed to know about how much risk was in those loans.

MR. SMURZYNSKI: Objection. Move to strike. Can we have more of a question and answer.

THE COURT: Yes. I really think we're getting much too much in the way of narrative.

MR. ARMAND: Understood, your Honor.

Q. Dr. Cowan, what is Analytic Focus?

A. It is a company I started after I left the government and after I had worked outside the government for a while. Started my own company.

DA33BAN3

Cowan - direct

1 Q. What does Analytic Focus do now?

2 A. We do finance, statistics, economics, and we work for the
3 government, we work for private sector, I mentioned banks
4 before. And we frequently work in litigation.

5 Q. Have you testified as an expert in the area of economics
6 and statistics before?

7 A. Yes.

8 Q. How many times?

9 A. At trial, probably a little less than 10.

10 Q. What was Analytic Focus retained to do in this case,
11 Dr. Cowan?

12 A. Analytic Focus, we were hired to do two things. One was to
13 design the sample, extrapolate the sample, and come up with
14 results about what happened in the re-underwriting of the
15 loans. Besides -- so the sample is the sample of loans from
16 the set of loans that we'll probably talk about in a minute.
17 But from the sample, the sample of loans was then
18 re-underwritten, and I believe you heard Mr. Holt testify about
19 this yesterday.

20 Q. How did you go about identifying Hustle loans, Dr. Cowan,
21 for your sample?

22 A. Could I have a copy of my report?

23 MR. ARMAND: May I approach, your Honor?

24 THE COURT: Yes.

25 MR. ARMAND: For the record, I'm showing the witness a

DA33BAN3

Cowan - direct

1 copy of -- withdrawn.

2 Q. Dr. Cowan, what are the documents I just presented to you?

3 A. The first one is an expert report I submitted in this case
4 May 7 of this year.

5 Q. Did you also provide an amended report?

6 A. I did. That's the second document.

7 Q. Did you also provide a declaration in this case that
8 provided additional information about your work?

9 A. I did. That's the third document.

10 Q. So, Dr. Cowan, I guess first let me step back.

11 Can you explain what a statistically reliable random
12 sample is.

13 A. Sure. In the examples I gave you before for the surveys,
14 what you want to do is take a sample where you are randomly
15 selecting units in the population. So in general, a random
16 sample or reliable random sample is a randomly selected set of
17 items in the population, whether it's people, whether it's
18 loans, whether it's widgets, it is whatever it is that you're
19 investigating.

20 So, the only real requirement on the sample is that it
21 be selected randomly.

22 The other requirement on the sample, there might be
23 other requirements that come about because of what you want to
24 know. So, I gave examples before for the CNN poll. It may be
25 that you want to divide the sample up by different parts of the

DA33BAN3

Cowan - direct

1 country, so you can make specific statements about different
2 parts of the country.

3 Q. Dr. Cowan, how did you go about determining or identifying
4 which loans in the data you received were Hustle loans?

5 A. Okay. Well, backing up a step. The first thing that I
6 should say is that I received a large set of loans, about
7 250,000 loans, but they weren't all part of the Hustle program.
8 So, I was given parameters by the government as to what
9 qualified as a Hustle loan. And the set of parameters that I
10 was originally given was that the loan in the set -- I guess I
11 should also explain that the full set of 250,000 loans were --

12 MR. HEFTER: Objection. Narrative.

13 THE COURT: Agreed. Put another question.

14 Q. Dr. Cowan, can you explain how you identified -- what the
15 criterion were that you used to identify Hustle loans.

16 A. Sure. I was told that a loan that was funded between
17 August 1st, 2007, and December 31, 2009, would qualify as a
18 Hustle loan with some other qualifications. The other two
19 qualifications were that the loan was accepted by an automated
20 underwriting system, and that the loan was processed or funded
21 through one of five Countrywide centers: Chandler, Arizona;
22 Hatboro, Pennsylvania; Plano, Texas; Richardson, Texas; or
23 Rosemead, California.

24 Q. Are you familiar with the term stratification or stratify?

25 A. Yes.

DA33BAN3

Cowan - direct

1 Q. What does that mean, Dr. Cowan?

2 A. Stratification means that I take the population that I have
3 and divide it into buckets. And so in the case of loans, loans
4 go into mutually exclusive categories or buckets, so that you
5 would sample randomly, but from within the buckets as opposed
6 to across all of the loans.

7 Q. Did you stratify the population of Hustle loans in this
8 case?

9 A. I did.

10 Q. How did you stratify them?

11 A. Okay. There were three criteria I used for stratification
12 of the loans. The first criterion was whether the loan was
13 current or prepaid. Those were combined, so that's one group.
14 Then the other group is all the rest of the loans.

15 Q. Can I stop you there. Why did you stratify as to the
16 status of the loan?

17 A. I was asked to by the government as one of the factors that
18 they may or may not want to look at.

19 Q. Were there any other stratifications that you applied?

20 A. Yes.

21 Q. What were the others?

22 A. Okay. I'm going to talk about the other stratifications
23 and then I will have to combine them all for you at the end.

24 The second stratification was dividing the loans up
25 according to the loan to value for the loan.

DA33BAN3

Cowan - direct

1 Q. How did you stratify it -- what is loan to value?

2 A. Loan to value is the ratio of how much the borrower got,
3 what was the amount of the loan divided by what the value of
4 the loan was worth. Which is usually, but not always, whatever
5 the appraisal was for the property.

6 So, it is the amount of the loan divided by what is
7 the value of the property.

8 Q. Can you explain how you stratify for loan to value ratio?

9 A. Yes. I just created three categories. If the loan to
10 value was less than 80 percent, that was category number one.
11 If the loan to value was equal to 80, that's category number
12 two. If the loan to value is greater than 80, that's category
13 number three.

14 Q. Why did you stratify it by loan to value ratio?

15 A. In terms of the definitions of which loans might be or
16 might not be in the Hustle program, there was still -- my
17 understanding from the government was that there was still an
18 issue about whether certain loans were excluded because of the
19 loan to value. So by creating these three categories, I could
20 include or exclude loans from the population, and from the
21 sample easily, and still come up with estimates as a result of
22 the sample.

23 Q. Did you stratify the population in any other ways?

24 A. Yes. So the last way I stratified the sample was by credit
25 score. And the credit score is the score that you get when you

DA33BAN3

Cowan - direct

1 are applying for a loan. Credit scores typically run between
2 350 and 850. And I took whatever the range was for the FICO
3 scores, those are the credit scores, and divided that range up
4 into five equal sized groups.

5 So the first group had one-fifth of the loans, the
6 second group had one-fifth of the loans, until the last group
7 which had one-fifth of the loans. It wasn't anything specific
8 about the credit loans, other than the loans were ordered
9 lowest credit score to highest credit score, and then I created
10 five equal sized groups.

11 Q. Dr. Cowan, was the sample that you selected a random
12 sample?

13 A. Yes.

14 Q. Can you explain to the jury how large the sample was that
15 you selected?

16 A. For the Hustle loans it was 600 loans.

17 Q. How did you choose 600 as the number you wanted to use for
18 the sample?

19 A. 600 would be the size of the sample that I would need if I
20 wanted to achieve a 95 percent confidence interval with a plus
21 or minus 5 percent margin of error.

22 Q. Can you explain what is a 95 percent confidence interval.

23 A. Sure. Okay. When I'm drawing a sample, I can draw a
24 sample of 600 loans randomly, but I can draw a second sample of
25 600, third sample, fourth sample. I can keep drawing samples.

DA33BAN3

Cowan - direct

1 The samples can overlap. There's no rules about which loans
2 fall into which samples. There are literally millions of
3 different ways of ways to draw samples of size 600 out of all
4 of the loans of the Hustle population. Each one of those
5 samples will give me a different outcome. The first 600 will
6 extrapolate up to some different number than the second 600.

7 As I look at the distribution of all of the possible
8 outcomes which I can calculate, what I want to know is, where
9 am I going to find the true value that I'm trying to estimate.
10 So 95 percent confidence interval means that I have 95 percent
11 confidence that the true value is inside of some range that's
12 part of the full set of outcomes that I might get. And I also
13 have to then set up a margin of error, a range, so that I can
14 determine that it is 95 percent likely that the true value is
15 going to fall inside that range.

16 Q. What is a margin of error?

17 A. Okay. Margin of error is just in -- it is indicative of
18 how much variability there is in the outcome from the sample
19 that you are going to get. So, we talked before about the CNN
20 ORC poll that may be published with a margin of error plus or
21 minus 2 percent. Meaning that the percentage that you are
22 trying to estimate is, whatever it is, 54 percent of the people
23 are going to vote for a presidential candidate. But it is
24 54 percent plus or minus 2 percent, which means that the true
25 percentage in the population has a 95 percent chance of falling

DA33BAN3

Cowan - direct

1 somewhere within that plus or minus two range. It would go
2 from 54 minus two, to plus two. There is a 95 percent chance
3 that the true value in the population would fall within that
4 range.

5 95 percent confidence interval goes hand in hand with
6 the margin of error in terms of determining where that
7 95 percent really is.

8 Q. Dr. Cowan, is there an industry standard requirement or
9 definition for margin of error, what the percentage needs to
10 be?

11 A. No. Not for margin of error. There are several standards,
12 but there is not one agreed-upon industry standard.

13 Q. Is there a range that you have used in your work, either in
14 private practice or in cases that you've worked on, that is a
15 reliable range?

16 A. Yes. Although, I will also say that the range that I
17 choose depends on what the situation is. But I've used plus or
18 minus 5 percent, plus or minus 10 percent, and in a couple of
19 instances I've used plus or minus 15 percent. At the other
20 extreme, I've used plus or minus 1 percent.

21 Q. What determines how large or small the percentage is?

22 A. Depends on what it is that you actually want to know. And
23 the level of precision that you need to know it.

24 Q. Dr. Cowan, can you explain how you went about drawing the
25 600 loan sample of Hustle loans from the database you received?

DA33BAN3

Cowan - direct

1 A. Okay. Well, using the criteria that we described before,
2 that I described before, I knew what the population of Hustle
3 loans was according to the definition that I've been given.

4 That population got divided up into the strata that we
5 talked about a minute ago. Within each of the strata, I simply
6 assign a random number to each of the loans that were in a
7 particular bucket. I ordered the loans by that random number,
8 so the loans are now in a random order. Then I took the first
9 however many loans I needed from that bucket, I could take the
10 first, let's say, 20 loans, I could take the last 20 loans, I
11 could skip the first 20, I could take the second 20, any of
12 those is a random set.

13 Q. What did you do after you finished drawing your 600 bucket
14 loan sample?

15 A. I gave that list to Mr. Holt.

16 Q. Does Mr. Holt also work at Analytic Focus?

17 A. Yes, he does. He's in our Birmingham office.

18 Q. During the loan review process, was there anything that you
19 were doing with regard to the loan review?

20 A. Not with respect to the loan review, no.

21 Q. Who was doing the loan review?

22 A. Mr. Holt and a variety of people working under Mr. Holt.

23 Q. All of those people worked for Analytic Focus?

24 A. Yes.

25 Q. Do you know how many people were involved in the overall

DA33BAN3

Cowan - direct

1 project, both on the sampling side and on the underwriting
2 side?

3 A. It came out to 40. We had 40 different people at different
4 times working on this project.

5 Q. Do you have an understanding of how many man hours were
6 expended on this project?

7 A. About 5,430.

8 Q. Has Analytic Focus been paid for its work in this case?

9 A. Yes.

10 Q. How much has Analytic Focus been paid?

11 A. To date, a little bit under \$1 million.

12 Q. Is the payment that Analytic Focus received in this case,
13 is it in any way contingent upon any of the opinions that are
14 being provided?

15 A. No.

16 Q. Is any payment that's been made to Analytic Focus
17 contingent upon the result of this trial?

18 A. No.

19 Q. Do you have an understanding as to what the types of
20 results that would come back from Mr. Holt's group with respect
21 to the loans after they were reviewed?

22 MR. SMURZYNSKI: Objection.

23 MR. HEFTER: Objection.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: Thank you, your Honor.

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Cowan - direct

1 A. Actually, I'm confused by your question. Are you asking me
2 about how it comes back to me or are you asking me what is
3 coming back to me?

4 Q. First can you explain what the findings are in the
5 categories of findings that come back from the loan review.

6 A. Well, what comes back to me from the loan review is a
7 relatively large database that has a summary of the findings
8 across a number of questions that Mr. Holt and his team of
9 reviewers are looking at. So I get back something that looks
10 like what you might think of as a spreadsheet. But it
11 summarizes a lot of different questions for every single loan.

12 Q. Did the results have categories of what the ultimate
13 findings were from Mr. Holt as to whether the loans were
14 investment quality or not?

15 A. Yes. There is one specific summary item that has three
16 codes. The loans are either of investment quality, they're
17 investment quality but they have some defects, or they're
18 considered to be materially defective.

19 Q. Did there come a time when you instructed Mr. Holt to
20 terminate the review of the 600 loan files?

21 A. Yes.

22 Q. When was that?

23 A. Towards the end of the underwriting process, Mr. Holt sent
24 me an initial database. I had requested this because I needed
25 it to be able to set up my computer programming, be able to

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Cowan - direct

1 figure out how do I put together my formulas, how to
2 extrapolate. So I got this data set that Mr. Holt had sent me.

3 And once I loaded it up, ran some tests, I saw that
4 the results indicated at that point we had 526 out of the 600,
5 and the results indicated that there was a fairly clear set of
6 outcomes. And that when I look at the outcome, I thought that
7 the remaining underwriting that would continue would not be
8 very fruitful. It wouldn't change the results much, in my
9 opinion. And so, I instructed Mr. Holt to stop underwriting.

10 Q. Were there any other considerations that factored into your
11 decision to terminate the loan review at that time?

12 A. Well, at that time, for me, I was getting towards the end
13 of the time period when I needed to produce both the data set
14 and a report. I needed to give the data set back to the
15 government, and at the same time, I needed to write the report
16 that I have in front of me.

17 Q. Is this a common or uncommon occurrence in statistical
18 sampling for items that have been selected to ultimately not
19 provide data for your research?

20 MR. HEFTER: Objection.

21 THE COURT: Poorly phrased. Sustained.

22 MR. ARMAND: I can try again.

23 Q. You talked earlier about surveys, Dr. Cowan.

24 A. Yes.

25 Q. You've conducted surveys in your work?

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Cowan - direct

1 A. I have.

2 Q. Is it a common or uncommon occurrence that not every person
3 who is selected to get information from a survey is not
4 contacted?

5 MR. HEFTER: Objection.

6 THE COURT: Sustained as to form. Just to move this
7 along.

8 As I understand it, you originally were going to have
9 a random sample of 600 Hustle loans, yes?

10 THE WITNESS: Yes.

11 THE COURT: Based on the feedback you got after 500
12 and some odd loans, you decided that nothing would change if it
13 was continued through the full 600, or nothing would change
14 materially, correct?

15 THE WITNESS: Yes. Nothing would change materially,
16 your Honor.

17 THE COURT: Based on time constraints and other
18 considerations, you therefore decided that you can go forward
19 on the basis of 500 and whatever, yes?

20 THE WITNESS: Yes.

21 THE COURT: And the question is, is that kind of
22 termination something that is commonplace in these kinds of
23 surveys, rare, something in between, or whatever?

24 THE WITNESS: I would say it's commonplace, your
25 Honor.

DA33BAN3

Cowan - direct

1 THE COURT: All right. Go ahead, counsel.

2 Q. Dr. Cowan, did there come a time -- or withdrawn.

3 What did you do with the results that Mr. Holt
4 provided to you from the loan review?

5 A. I took the results from the loan review, I tabulated them
6 using the buckets that we talked about before, there is 30
7 buckets over all. I took the results bucket by bucket,
8 weighted them together in proportion to how they exist in the
9 population, so I took a weighted average. I added them up.

10 So, some groups in the sample had more proportionally
11 than they did in the population so they got weighted down.
12 Other groups didn't have as many in the sample as they would
13 have in the population. They got weighted up. By doing that
14 balancing, and taking that average, I got a reliable unbiased
15 estimate for the population.

16 Q. Did there come a time when the definition of the High-Speed
17 Swim Lane that had been provided to you changed?

18 A. Yes.

19 Q. When was that?

20 A. I was it was after I submitted my first report. And, but I
21 don't remember the exact date, but it was sometime after
22 May 13.

23 Q. What was the change to the definition?

24 A. Okay. I'm referring to my amended report. And --

25 MR. SMURZYNSKI: Your Honor, I move to strike.

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Cowan - direct

1 THE COURT: The ground being?

2 MR. SMURZYNSKI: It's not in evidence.

3 THE COURT: All right.

4 MR. SMURZYNSKI: It's hearsay.

5 THE COURT: Hearsay. That's what I thought.

6 So, do you need the report to refresh your
7 recollection?

8 THE WITNESS: I need the report to remember exactly
9 what the dates were. But the short answer is the dates
10 changed.

11 THE COURT: All right. We'll leave it at that then.
12 Go ahead, put another question.

13 Q. Would it refresh your recollection to refer to your report?

14 A. Yes.

15 THE COURT: But remember, just so the witness is clear
16 and the jury is clear, if, after looking at the report, you
17 have an independent recollection that is refreshed, you can
18 testify to that. But you can't just read from the report
19 because the report is not in evidence, because it is, as
20 counsel pointed out, hearsay.

21 So, look at the report. If it jogs a memory, you can
22 put the report aside and tell me what your jogged memory is.
23 If it doesn't jog your memory, then it doesn't.

24 THE WITNESS: Okay. Thank you, your Honor.

25 A. So, the primary change, just to keep this brief, is that

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Cowan - direct

1 the earlier date on the range that I gave you before started
2 about the same, but now it was either that the loan was going
3 to be funded or it was going to be processed. At the back end,
4 the date changed, but it moved up substantially from the end of
5 2009 to sometime in September 2008. So more than a year got
6 cut off on the back end.

7 Q. So, Dr. Cowan, did the period of time that you provided
8 for -- for the definition criteria of the Hustle, did it expand
9 or narrow?

10 A. The period of time narrowed.

11 Q. How many Hustle loans were left in your sample that had
12 been reviewed by Mr. Holt after the time period was narrowed?

13 A. Okay. The number that were in the sample, and also
14 reviewed by Mr. Holt, that were in this reduced time frame was
15 343 loans.

16 Q. What was the percentage of loans that Mr. Holt identified
17 within 343 that were materially defective?

18 A. As I remember, without looking at my report, it is
19 42.8 percent.

20 I'm sorry. That's in the population. You mean in the
21 sample or in the population?

22 Q. From the sample that Mr. Holt provided to you. Before you
23 look, do you not have -- would it help to refresh your
24 recollection to refer to your report?

25 A. It would. But the short answer to the question is it is

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Cowan - direct

1 over 50 percent.

2 MR. HEFTER: Objection, your Honor. Cumulative.

3 THE COURT: I'll allow it. You may finish the
4 sentence. The short answer is?

5 A. The short answer is over 50 percent in the sample were
6 considered by Mr. Holt to be materially defective.

7 Q. What did you do with that percentage that Mr. Holt provided
8 to you?

9 A. I can't answer the question exactly the way you worded it.
10 I didn't do something specific with the percentage. What I did
11 was, the same process that I described before, which is
12 calculating defect rates within each of the strata. And then I
13 took the weighted average across the strata to come up with a
14 new percentage.

15 Q. What was that new percentage?

16 A. That was the first number I gave you, 42.8 percent.

17 Q. So, we're clear, what does the 42.8 figure represent?

18 A. The estimate, so it is our best estimate of what the
19 materially defective loan rate is in the population of Hustle
20 loans under the new shortened time frame.

21 Q. The fact --

22 THE COURT: I'm sorry, counsel, we are going to have
23 to break today at in about five minutes so find an appropriate
24 spot.

25 MR. ARMAND: Almost done, your Honor.

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Cowan - direct

1 THE COURT: Okay.

2 Q. The sample of Hustle loans that were ultimately reviewed,
3 the 343, was that sample large enough for you to draw
4 conclusions about the population of Hustle loans?

5 A. Well, since the 343 or the new definition, it is the subset
6 of the old definition, samples in the new -- I'm sorry.

7 Loans sampled in the new definition are a random
8 subset of loans from the old definition. So, yes, I can
9 extrapolate in exactly the same way, but the results are a
10 little less reliable, they're a little bit more variable,
11 because I had fewer loans in the sample.

12 Q. Did you calculate a margin of error for the 42.8 figure
13 that you just provided?

14 A. I actually didn't calculate it exactly for the 42.8,
15 because I used a more conservative approach that would give me
16 a larger margin of error. So, reporting to you the largest
17 margin of error that I would get, it is about 8.8 percent,
18 8.7 percent. Which I think we should just call 9 percent.

19 Q. So what does it mean that it has an 8.8 percent margin of
20 error?

21 A. If you take the estimate I gave you before, and rather than
22 carry around all these decimal places, if you take the number I
23 gave you before which is about 43 percent, and you subtract
24 9 percent, that gives you 34 percent. Since that's the lower
25 end of that confidence range I told you, 95 percent of the time

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Cowan - direct

1 the true value is going to fall somewhere in that range. So
2 somewhere above the 34 percent. There is only a two and a half
3 percent chance that the true value then is below 34 percent.

4 So the interpretation of that is that 34 percent is
5 the lower end of the range, and there is only a two and a half
6 percent chance of getting a number in the population that's
7 below that.

8 MR. ARMAND: Last question, your Honor.

9 Q. Did you do anything to test whether or not the percentage
10 that you calculated was biased or not?

11 A. Yes. Do you want me to explain?

12 Q. Yes, please.

13 THE COURT: He didn't really mean that was his last
14 question.

15 MR. SMURZYNSKI: Your Honor, objection. Can we
16 approach?

17 THE COURT: No.

18 MR. SMURZYNSKI: Okay.

19 THE COURT: Answer the question.

20 THE WITNESS: Thank you, your Honor.

21 A. Okay. So, I didn't -- so I started with 600 loans. We
22 only reviewed 526. So the question is, is that a biased subset
23 of the 600, yes or no.

24 When we reduced the definition, instead of the 600
25 loans we now had only 410 loans in the new definition in the

DA33BAN3

Cowan - direct

1 sample. But I only looked at 343, or Mr. Holt only looked at
2 343.

3 Is that subset biased relative to the 410. So I did
4 what's called a chi-square test. It is a common test in
5 statistics. And the result was no. There was no bias. You
6 can't tell statistically that there is any difference between
7 the loans that finally got reviewed and the full sample of the
8 600 or the 410 in the later definition.

9 MR. ARMAND: Thank you. We have nothing further, your
10 Honor.

11 THE COURT: Ladies and gentlemen, when I said we were
12 going to break for the day, I didn't mean for the whole day, I
13 meant for lunch. You're not off the hook.

14 But I do want to let you know this afternoon, we're
15 only going to sit until 3:50 because of another matter I have.
16 So, when you come back at 2 o'clock, we're going to sit without
17 a break from then for about an hour and 50 minutes, and then
18 we'll let you go for today. Have a good lunch. We'll see you
19 at 2 o'clock.

20 (Jury excused)

21 (Continued on next page)

DA33BAN3

1 THE COURT: Let me ask defense counsel, what was the
2 matter you wanted to raise at the side bar?

3 MR. SMURZYNSKI: On the last issue? It was that the
4 bias test that he did was provided to us for the first time in
5 September well after the deadline for the expert reports.

6 THE COURT: I understood that, and I factored it in in
7 overruling the objection. You now have your record for appeal.
8 Of course, the jury fully understands after that short answer
9 exactly what a chi-square test is.

10 All right. How long is defense going to be on cross?

11 MR. SMURZYNSKI: Your Honor, there are a couple issues
12 I'd like to raise obviously without the witness present.

13 THE COURT: We should excuse that witness from the
14 courtroom.

15 MR. SMURZYNSKI: He's not here.

16 The first is the witness today on direct testified as
17 to reasons why he stopped Mr. Holt in a way that was different
18 than he testified in front of your Honor on Monday at the
19 Daubert hearing.

20 THE COURT: You can confront him with that.

21 MR. SMURZYNSKI: And your Honor, that would involve
22 getting into the comparison of HSSL versus non-HSSL.

23 THE COURT: No, you will not be allowed to.

24 MR. SMURZYNSKI: That's the problem, because his
25 answer, as your Honor may recall at the Daubert hearing, is he

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1 stopped because he did a comparison between the two to
2 determine it wouldn't be helpful to the government's case and
3 therefore he figured he would stop. Just so we have a record,
4 your Honor --

5 THE COURT: No, I want you to make your record, you'll
6 make it at 2 o'clock. The reason I had to stop things now is
7 because there is a judges meeting at 1 o'clock and I have to be
8 there.

9 MR. SMURZYNSKI: Appreciate it, your Honor.

10 THE COURT: We'll take this up at 2.

11 (Recess)

12 (Continued on next page)

DA3TBAN4

1 (Jury not present)

2 MR. ARMAND: Dr. Cowan is still present in the
3 courtroom.

4 THE COURT: I see. So he should go outside for a
5 minute.

6 So let me hear from defense counsel.

7 MR. SMURZYNSKI: Briefly, your Honor, on direct
8 Dr. Cowan testified about the reason for stopping, I think it's
9 different than the testimony he gave on September 30, 2013, and
10 I can read the page and lines to your Honor.

11 THE COURT: If you let me just see it if you have it.

12 MR. SMURZYNSKI: Absolutely.

13 THE COURT: Page?

14 MR. SMURZYNSKI: 912, line 12 through 23, and page
15 916, lines --

16 THE COURT: Wait, page 912, line --

17 MR. SMURZYNSKI: 12 through 23.

18 THE COURT: OK. And the other one?

19 MR. SMURZYNSKI: Page 916, line 18 through 917, line
20 5.

21 So let me hear from the government.

22 MR. ARMAND: Your Honor, I think because of the way
23 the questioning was that preceded this, the discussion was
24 about Hustle and non-Hustle. And Dr. Cowan provided his
25 reasoning about stopping with regard to Hustle and non-Hustle,

DA3TBAN4

1 but he also testified at his deposition his reasoning with
2 regard to the Hustle loans. And none of this is -- are
3 exclusive reasons that he's giving was this the sole reason.

4 So I think Dr. Cowan has testified here at the Daubert
5 hearing and in his deposition and here today, and there were
6 multiple considerations. And so this isn't inconsistent, this
7 is just another reason that factored into the analysis, and the
8 reason it came out the way it did was because your Honor and
9 Dr. Cowan were discussing the Hustle and non-Hustle aspect of
10 the sample.

11 THE COURT: I think if you read through, as I just
12 did, the entirety of his answer to the Court's questions, while
13 there is an answer here and there in response to questions the
14 Court put about both the Hustle and the non-Hustle loans that
15 are arguably different from what he said here in court, he then
16 makes clear in the following answers throughout, beginning on
17 page 913 and continuing for quite a few pages thereafter, that
18 what he actually did was calculate what the possible difference
19 would be if the remaining Hustle loans were all non-defective,
20 whereas he did not do that for the non-Hustle loans. But he
21 did it for the Hustle loans to make sure that even on a worst
22 case scenario, it wouldn't matter to the conclusions that were
23 being drawn.

24 So I don't really think there is a basis to open this
25 up to the non-Hustle loans. So that will not be permitted.

DA3TBAN4

1 All right. Was there something else?

2 MR. SMURZYNSKI: I understand your Honor's ruling,
3 obviously we disagree and we have a record on it.

4 THE COURT: I'm hurt, of course. I'll salve my wounds
5 with difficulty.

6 MR. SMURZYNSKI: There is one other issue. Dr. Cowan
7 testified that his basis for the HSSL population was entirely
8 information provided to the government. Obviously the
9 government can tie that up at some later time in the course of
10 its case, but if they fail to, we would move to strike his
11 testimony as being unreliable and not fitting with anything
12 that's in the case, but I wanted to --

13 THE COURT: I'm really missing the point.

14 MR. SMURZYNSKI: I apologize.

15 THE COURT: My fault, go ahead.

16 MR. SMURZYNSKI: Dr. Cowan testified as to his
17 opinions based on an assumption about what the HSSL population
18 was.

19 THE COURT: Based on what he was told by the
20 government.

21 MR. SMURZYNSKI: Based on what he was told by the
22 government.

23 THE COURT: So if that is -- then they changed their
24 measure.

25 MR. SMURZYNSKI: No, I understand. Even the changed

DA3TBAN4

1 measure, the 28,000 loans, we do not believe -- there hasn't
2 been any evidence in the case yet that that's correct, and if
3 the government elicits it --

4 THE COURT: If in the end there is not -- it
5 doesn't -- there doesn't have to be -- for an expert, the
6 evidence of that does not have to have been admitted, but it
7 has to be admissible. So if your point is there's no
8 admissible evidence to support the government's -- what they
9 told him to assume, that would be a reason for striking his
10 testimony, although not one you raised at the Daubert hearing.

11 If you think -- if your point is that you intend to
12 prove definitively that it's something else and I am convinced
13 that no reasonable juror could conclude it was what he assumed,
14 that might also be a ground for striking his testimony, but
15 we're not there on either of those points at this point in
16 time.

17 MR. SMURZYNSKI: I agree we're not there yet either,
18 your Honor, I want to note it so there was no question that we
19 were waiving it.

20 THE COURT: I think there is a question as to the
21 former of the two possibilities that I mentioned, that you
22 might have waived it by not raising it at the Daubert hearing,
23 but we don't have to reach that yet.

24 MR. HEFTER: Your Honor, so the record is clear, we
25 would join in that as well.

DA3TBAN4

1 THE COURT: Really? Duly noted.

2 MR. ARMAND: And for the record, we believe evidence
3 has been submitted to justify the government's position.

4 THE COURT: The record is full of notes.

5 MR. CORDARO: Your Honor, I wanted to bring the
6 Court's attention to a developing scheduling issue with the
7 next witness, Ms. Padgett, who is from Freddie Mac.

8 THE COURT: Let's get this witness in and see if we
9 can finish this witness, because we have to end at 3:50, as you
10 have been informed, and we'll take up other issues.

11 MR. CORDARO: She has a child that's a special needs
12 child, and she really needs to go home today. I don't
13 anticipate a very lengthy direct, and I will keep it under 30
14 minutes.

15 THE COURT: And you wanted to take her out of order?

16 MR. CORDARO: If we could get her out of New York by
17 3:50, we would request that.

18 THE COURT: There's no way -- as I understand the
19 scope of the cross, I haven't put a time limit on it, but I
20 assume it's not going to be less than one half hour.

21 MR. SMURZYNSKI: No, very much will be less than half
22 an hour.

23 THE COURT: OK.

24 MR. CORDARO: I think it should be OK.

25 THE COURT: And I assume we'll ask Dr. Cowan about his

DA3TBAN4

1 intimate knowledge of Ms. Mairone, which will take about two
2 minutes.

3 MR. HEFTER: Without being inconsistent with my
4 colleague, I will limit my examination to four minutes.

5 THE COURT: OK. Well, you ask a lot, but it's
6 agreeable to the Court.

7 Let's get the witness back and let's bring in the
8 jury.

9 (Continued on next page)

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DA3TBAN4

Cowan - cross

1 (Jury present)

2 THE COURT: Juror number one always starts to sit and
3 thinks no, I better stand because everybody else is standing.
4 So I should make this clear, they all have to stand because
5 they're standing in honor of you. You can sit down whenever
6 you want. So you don't have to wait until I say, "Please be
7 seated," that's only for them.

8 CROSS-EXAMINATION

9 BY MR. SMURZYNSKI:

10 Q. Good afternoon, Dr. Cowan.

11 A. Good afternoon.

12 Q. My name Ken Smurzynski and I represent the banks. I will
13 ask you a couple of questions this afternoon.

14 Dr. Cowan, the first step in your analysis was to pick
15 a population of HSSL loans out of the complete data set that
16 you received of all Full Spectrum lending loans, is that
17 correct?

18 A. I think I used the word identify rather than pick, but yes.

19 Q. And in identifying those loans, you used a definition that
20 was provided to you by one of the lawyers for the government,
21 is that correct?

22 A. Yes.

23 Q. And you did no independent work to determine which loans
24 were HSSL loans and which loans were not HSSL loans, correct?

25 A. I did not.

DA3TBAN4

Cowan - cross

1 Q. And using the definition given to you by Mr. Armand, you
2 ultimately selected 28,882 loans, is that right?

3 A. No, sir, I think it was larger than that, unless you're
4 talking about the amended definition.

5 Q. I'm talking about the amended definition, thank you. So
6 the testimony you gave today about the defect rate you found
7 was based on an amended definition of HSSL loans, correct?

8 A. That's correct. So I did the exercise that you described
9 twice, once with the first definition and once with the second
10 definition.

11 Q. And in each instance the definition was provided to you by
12 Mr. Armand, the attorney for the government, correct?

13 A. Yes.

14 Q. And using that same definition of HSSL loans, you
15 identified the 343 loans in the sample that your colleague,
16 Mr. Holt, re-underwrote, is that correct?

17 A. Almost. What actually happened is that I identified all of
18 the loans in the population, and then that immediately told me
19 what was in the sample that was from the definition of Hustle.

20 Q. But just to be clear, when Mr. Holt talks about and you
21 talk about on direct examination here the results of the 343
22 loans, those are HSSL loans based on the same definition
23 provided to you by the attorney for the government, Mr. Armand?

24 A. Yes, sir, that's correct.

25 Q. OK. Now I ask you, Dr. Cowan, to assume for the moment

DA3TBAN4

Cowan - cross

1 that those 28,882 loans were not in fact all HSSL loans. If
2 that were the case, the numbers you provided to the jury
3 earlier today would not be correct, is that the case?

4 A. They may not be correct, but I don't know how many more or
5 less Hustle loans this might be.

6 Q. Assume with me that less than half of those 28,000 loans
7 were actually HSSL loans, would that change the results?

8 A. It may or it may not. It depends on whether the new
9 definition changes in some way the inclusion or exclusion of
10 the loans in a way that's correlated with what we're trying to
11 measure.

12 Q. And you don't know that one way or the other?

13 A. That's correct, I don't know that.

14 Q. And your answer would be the same if we were to assume that
15 only two-thirds of those loans were HSSL loans, correct?

16 A. That's correct. Without knowing exactly which loans we're
17 talking about, I couldn't tell you anything about an
18 alternative.

19 Q. OK. Now I believe I heard this correctly, on direct you
20 testified that given this population of 28,882 loans, and
21 assuming that Mr. Holt did his work correctly, that the
22 material defect rate was 42.8 percent, is that right?

23 A. Yes, that's what I remember without referring back to my
24 report.

25 Q. And then there was a margin of error around that as well?

DA3TBAN4

Cowan - cross

1 A. Well, what I said exactly was that I computed the margin of
2 error in a more conservative fashion that led me to a slightly
3 different result, but also gave me a broader margin of error.
4 So if you apply that margin of error to the 42.8 percent, then
5 what you just said is correct.

6 Q. So under your analysis, the material defect rate, if you
7 assume Mr. Holt was correct, could be as low as 34 percent?

8 A. Well, as low as that, given the 95 percent confidence in it
9 all. So I'm only making a statistical statement here.

10 MR. SMURZYNSKI: Alex, could you put on the screen
11 PK437, which is a demonstrative used earlier in the case by the
12 government.

13 Q. Dr. Cowan, let me address you to this demonstrative exhibit
14 that was used in Mr. Holt's examination. This demonstrative
15 suggests that 53.9 percent of the HSSL loans were materially
16 defective. Do you see that?

17 A. You mean in the sample?

18 Q. That's my question. This is only for the sample.

19 A. Yes, and the number I gave you was my extrapolation to the
20 population.

21 Q. So when you're actually talking about what you believe to
22 be the population of HSSL loans, that's all of them, it's not
23 53.9 percent?

24 A. No, it's quite a bit less than the 59.9. The 53.9 applies
25 to only the 343 loans in the sample, but then you have to do

DA3TBAN4

Cowan - cross

1 something with those numbers to project from the sample to the
2 population.

3 MR. SMURZYNSKI: Thank you, Alex, you can take that
4 down.

5 Q. Your intent, Dr. Cowan, was for Mr. Holt to re-underwrite
6 all the loans that you provided him in the original sample, is
7 that correct?

8 A. That was my original intent, yes.

9 Q. But you stopped Mr. Holt early in that process, correct?

10 A. I did.

11 Q. And the reason you stopped Mr. Holt was not that Mr. Holt
12 had no time left to do the work, correct?

13 A. We could have finished the work had we continued for over
14 another week and if we started to put everyone on overtime.

15 Q. OK. And when you made the decision to stop the work, you
16 had looked at the results through whatever had been completed
17 at that point, correct?

18 A. That's correct.

19 Q. And I believe your testimony on direct was -- but correct
20 me if I'm wrong -- you thought those results were likeable to
21 you so you stopped?

22 MR. ARMAND: Objection.

23 THE COURT: Sustained.

24 Q. Dr. Cowan, you don't know what Mr. Holt's results would
25 have been if he had continued to do the work on the sample, do

DA3TBAN4

Cowan - cross

1 you.

2 A. I can't answer that question the way you phrased it. What
3 I knew was what the range of outcomes could be. And we went
4 through that in my deposition about how to calculate the range
5 of potential outcomes if you consider what outcomes there could
6 have been for the remaining 74 loans out of the first 600.

7 Q. And that range of outcomes could have been different than
8 the 42.8 percent that you gave earlier today, is that right?

9 A. Well, that's a specific number. The range of outcomes
10 would be a range of outcomes, so I don't know how to answer
11 your question. That's one number, the other is a range of
12 numbers.

13 THE COURT: I think the question was designed to get
14 at if you had continued and Mr. Holt had continued through the
15 full original number you had calculated, if I understand what
16 you're saying, that the number could have gone down to X or
17 could have gone up to Y, and that would be the range. Do I
18 have that right?

19 THE WITNESS: I'm sorry, it's your question, so --

20 THE COURT: No, it's my question to you.

21 THE WITNESS: Yes, sir, that is correct.

22 Q. The number could have gone lower than the number?

23 A. The number could have gone equally each way, lower or
24 higher.

25 Q. We won't know because Mr. Holt stopped his work, correct?

DA3TBAN4

Cowan - cross

1 MR. ARMAND: Objection.

2 A. Well, you would know how low or high it would be.

3 THE COURT: There's an objection.

4 THE WITNESS: Sorry.

5 THE COURT: So sustained.

6 Actually I withdraw that. I'm going to reverse myself
7 on that. He may answer that question.

8 You know the range, but you don't know what the actual
9 result would have been?

10 THE WITNESS: I don't know the actual result, but the
11 way you characterized it, I do know that it's within minus
12 three or plus three of the number that I actually had.

13 MR. SMURZYNSKI: I have no further questions.

14 THE COURT: OK. Counsel?

15 MR. HEFTER: We have no questions for this witness.

16 THE COURT: Anything else?

17 MR. ARMAND: Very quickly, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. ARMAND:

20 Q. Dr. Cowan, earlier you were asked about the change in the
21 time period that was provided to you by the government, and I
22 believe you stated it was -- that the end date was in September
23 of 2008. If I could direct you to your report, your amended
24 report, page 29, do you still have it?

25 MR. SMURZYNSKI: Your Honor, objection, hearsay.

DA3TBAN4

Cowan - redirect

1 MR. ARMAND: I would like to give Dr. Cowan a chance
2 to refresh his recollection about the end date.

3 THE COURT: I think you have to put a foundational
4 question. Let's start it afresh. After the change, what was
5 the start date and what was the end date, if you recall?

6 THE WITNESS: The start date was very similar to the
7 earlier start date, the end date I believe I said before was
8 September, it may have been August of 2008.

9 THE COURT: All right. Put another question.

10 BY MR. ARMAND:

11 Q. Would -- is the information -- the actual end date, is it
12 contained within your report?

13 A. Yes, it is.

14 Q. Would it refresh your recollection -- or withdrawn.

15 Did you at one time know what the end date was?

16 A. Well, I had to know exactly what the end date was as I was
17 doing the tabulations. Now I'm trying to work from memory as
18 to what the exact end date was, but it was around a year
19 earlier than the earlier end date.

20 Q. Would it refresh your recollection to look in your report
21 and see what you wrote about the end date?

22 A. Yes.

23 MR. ARMAND: May I refresh the witness's recollection
24 with his report, your Honor?

25 THE COURT: Yes.

DA3TBAN4

Cowan - redirect

1 Q. I direct you to page 29 of your report, Dr. Cowan, your
2 amended report, footnote 11.

3 A. Yes.

4 Q. You can't read from it, but now that you looked at it, does
5 it refresh your recollection as to the start and stop dates of
6 the Hustle definition that you were provided?

7 A. Yes, I had my months reversed. It started in August of
8 2007 and ended in May of 2008.

9 MR. ARMAND: Thank you, Dr. Cowan.

10 THE COURT: All right. Anything else?

11 BY MR. ARMAND:

12 Q. With regard to the 43 percent or 42.8 defect rate you
13 provided, there was a margin of error about nine percent, is
14 that correct?

15 A. Yes.

16 Q. And you were asked if that meant that the margin of error
17 could be -- the actual percentage could be lower, nine
18 percentage points lower than 42.8 percent, is that right?

19 A. Yes.

20 Q. Could it also be higher?

21 A. It's equally likely on the other end, there is only a two
22 and a half percent chance that would be 43 plus nine or 52.

23 MR. ARMAND: Thank you. I have nothing further.

24 THE COURT: Anything else?

25 MR. SMURZYNSKI: Nothing, your Honor.

DA3TBAN4

Padgett - direct

1 MR. HEFTER: No, your Honor.

2 THE COURT: Thank you very much, you may step down.
3 Please call your next witness.

4 MR. CORDARO: The government calls Pamela Padgett.

5 PAMELA PADGETT,

6 called as a witness by the Plaintiff,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CORDARO:

10 DEPUTY CLERK: State your name and spell your last
11 name slowly for the record.

12 THE WITNESS: Pamela Padgett, P-A-D-G-E-T-T.

13 BY MR. CORDARO:

14 Q. Good afternoon, Ms. Padgett.

15 Are you employed?

16 A. Yes.

17 Q. Where do you work?

18 A. I work for Freddie Mac.

19 Q. What is your job title?

20 A. I'm a vice president of single family quality control and
21 underwriting.

22 Q. When did you attain that position?

23 A. The title itself was December 2010.

24 Q. Where are you based?

25 A. McLean, Virginia.

DA3TBAN4

Padgett - direct

1 Q. Could you just explain to the jury what you mean by single
2 family?

3 A. It's the group of residential homes that are one to four
4 family dwellings as opposed to multifamily apartment units.

5 Q. I believe you also used the term "quality control" in your
6 job title, is that correct?

7 A. Yes.

8 Q. Could you explain to the jury what quality control means in
9 this context?

10 A. In this context it would be the review of loan files to
11 ensure what the quality of the loans are against what we
12 thought we purchased as an investor.

13 Q. Could you explain your job duties, your current job duties?

14 A. I lead a team of underwriting staff and managers and
15 directors whose jobs are to take a look at loan files that we
16 purchase and to go through the documents, make sure that the
17 documents themselves are accurate. They go through a
18 reverification process. Then they review those loans to make
19 sure that the loans met the terms of the contracts under which
20 we agreed to purchase them and that those loans are of
21 investment quality.

22 I also, as part of my job, set the policies and
23 procedures for what the reviews entail. We work to make sure
24 we're aligned, because there's a very large staff, so I want to
25 make sure that the decision on the loan, whether it's

DA3TBAN4

Padgett - direct

1 investment quality, is consistent, regardless of who on my team
2 or in our contract team or vendors that help us with those
3 reviews, to make sure we get consistent decisions.

4 Also work on training to ensure that we are properly
5 using the tools that we have to determine investment quality,
6 that the calculations are consistent, and that we have
7 reporting and management discussions around our results.

8 Q. Ms. Padgett, how big is the team that you lead?

9 A. My underwriting team with managers and directors is
10 approximately 150 people. They're also accountable for four
11 different underwriting vendors, the oversight of the quality of
12 originations, our reviews of those vendors as well as
13 contractors, and that would probably increase that number to
14 around 200, 220 people.

15 Q. Ms. Padgett, could you give us your educational background
16 starting with college, please.

17 A. Yes, I graduated from the University of Alaska, Anchorage,
18 with a degree in psychology and a minor in real estate.

19 Q. When did you first begin working in the mortgage industry?

20 A. 1976 is when I began working.

21 Q. Do you have any experience as an underwriter?

22 A. Yes, I do.

23 Q. Could you summarize for us your experience as an
24 underwriter?

25 A. Yes, I began my career in mortgage banking in 1976, as I

DA3TBAN4

Padgett - direct

1 mentioned, then in two years I moved from file clerk, file
2 reviews servicing into loan processing, and then into
3 underwriting in about 1979. Then from that time period on I
4 held various positions with increasing levels of responsibility
5 in the underwriting and loan origination process through my
6 current position at Freddie Mac.

7 Q. When did you start employment at Freddie Mac?

8 A. 1992.

9 Q. Could you take us through the various positions you held at
10 Freddie Mac to the present day?

11 A. Yes. The first year I was at Freddie Mac I worked in the
12 institutional eligibility group, which basically means I had a
13 team of folks who looked at institutions themselves, mortgage
14 bankers, banks, other seller servicers to see whether they met
15 our requirements to be approved as a seller servicer, and that
16 included their financial strength.

17 After a year, a position opened in quality control,
18 which is really most of my background, and I was named director
19 of quality control and underwriting for Freddie Mac for the
20 regional community sellers, which is most of the customers that
21 we do business with, but the smaller ones not the larger ones.
22 I was in that position for several years, and moving up to
23 national underwriting director after approximately ten years.
24 And basically that's the same job I hold today, the same
25 responsibilities for overseeing the teams that do all of the

DA3TBAN4

Padgett - direct

1 underwriting at Freddie Mac with just a different job title.

2 Q. So would it be correct that you were -- you held the title
3 of national underwriting director during the 2007/2008 time
4 period?

5 A. Yes.

6 Q. Ms. Padgett, you touched on this a little already, but
7 could you please describe for the jury in some detail as to
8 what you were in charge of as the national underwriting
9 director in 2007/2008?

10 A. So specifically our team would receive loan samples, so
11 randomly selected loans of new purchases from our seller
12 services, as well as loans that defaulted in certain periods.
13 And those loan samples would come to us and be assigned to us,
14 essentially, and we would request loan files from the seller
15 servicers. Those files would come in. We would run all the
16 documents that were used to originate the loan, employment
17 verifications, bank statements, anything in the file that we
18 could reverify.

19 And when the reverifications were done they're
20 assigned to an underwriter, and someone on my staff would take
21 the file apart, basically, and recalculate income, assets,
22 would spend a lot of time looking at collateral to make sure
23 that the property values were substantiated, make sure the
24 borrower's credit was sufficient and income was sufficient to
25 be able to repay the debt. During that time those folks that

DA3TBAN4

Padgett - direct

1 underwrite the loans would engage with lenders around things we
2 might see around loan quality. If we determined that there
3 were loans of non-investment quality, we would issue potential
4 repurchases. Lenders have the opportunity to appeal. If they
5 didn't understand or agree with decisions on non-investment
6 quality, those loans were escalated to me, among others, and I
7 would re-underwrite loans as well. And we would make the
8 ultimate determination as to whether the loans were investment
9 quality for Freddie Mac and whether a repurchase or other
10 remedy would be appropriate.

11 Q. Could you just give us a quick picture of where the loans
12 would be coming from that your team was reviewing?

13 A. Yes, they would be coming from every seller servicer with
14 whom we had a relationship who had delivered loans to us in the
15 prior months or where we had purchased loans that were in our
16 portfolio and they had subsequently defaulted.

17 Q. And you spoke of a sample. Could you explain to us what
18 you meant by the sample?

19 A. So really two samples. One was if a lender closes a loan
20 to borrowers and they delivered loan to Freddie Mac, and we
21 would pay for the loan and move it to our portfolio. Those
22 loans are newly originated loans. And every month, the month
23 following our purchase of those loans, we took a random sample
24 of those loans from all of our sellers, at least one loan from
25 every seller, and would call those loan files in from those

DA3TBAN4

Padgett - direct

1 sellers, as well as loans that lenders would notify us had
2 defaulted, we would call in certain of those non-performing
3 loans for review.

4 Q. And what was the purpose of this whole operation?

5 A. The purpose of the review, regardless of the status of the
6 loan, performing or non-performing, was to determine whether at
7 the time we purchased those loans they were investment quality
8 in accordance with our guide and contracts.

9 Q. And what would happen if a determination were made that the
10 loan was not investment quality?

11 A. If a loan were determined to be not investment quality, we
12 would capture that data and would issue a remedy letter to the
13 seller servicer notifying them of our finding that it was not
14 investment quality.

15 Q. And what, if anything, would happen after that?

16 A. As I mentioned, lenders could always appeal our decisions
17 to make sure that we had all of the information from the loan
18 file, and that we -- they clearly understood our position, or
19 if they had information that we weren't aware of we would
20 certainly reconsider that. If they could prove to us that the
21 loan was an investment quality when we purchased it, we would
22 rescind the remedy or repurchase and keep it. If they were
23 unable to do so, we would uphold our determination and remedy
24 request.

25 Q. Were there any other available remedies besides repurchase?

DA3TBAN4

Padgett - direct

1 A. Yes.

2 Q. Could you explain what those remedies were?

3 A. Yes. On the performing loan sample, if you remember,
4 that's the random based sample of loans we just purchased, in
5 those cases, unless the finding that caused the loan to be not
6 acceptable quality, not investment quality, was so egregious
7 such as a charter violation like there was not really a home on
8 the land or something really egregious, unless that occurred,
9 we issued what we called a feedback letter, which is
10 essentially outlining why the loan was not investment quality.
11 And we would tell lenders use this for training your staff, and
12 at this time we won't require repurchase, but should the loan
13 default at a later time, we would look at it and we held our
14 rights to issue repurchase at a later time.

15 Q. Did this particular remedy apply only to performing loans
16 or to defaulted loans as well?

17 A. Just to performing loans.

18 Q. Ms. Padgett, do you know if Countrywide sold loans to
19 Freddie Mac during the 2007/2008 time period?

20 A. Yes.

21 Q. And did they?

22 A. Yes, they did.

23 Q. Are there any Freddie Mac documents that Countrywide had to
24 comply with as a seller of loans during that period?

25 A. Yes.

DA3TBAN4

Padgett - direct

1 Q. What kind of documents?

2 A. The Freddie Mac seller servicer guide and any and all
3 negotiated master agreements that we had with them.

4 Q. Would you recognize the seller servicer guide if you saw
5 it?

6 A. Yes.

7 Q. Is it a big or small document?

8 A. It's a big document.

9 Q. If I showed you excerpts, would you recognize them, do you
10 think?

11 A. Yes.

12 MR. CORDARO: Your Honor, I would like to approach the
13 witness and show her Plaintiff's Exhibit 170, which has been
14 admitted into evidence.

15 THE COURT: Go ahead.

16 MR. CORDARO: Thank you.

17 Q. Ms. Padgett, I placed before you Exhibit 170 in evidence.
18 Do you recognize that document?

19 A. Yes.

20 Q. What do you recognize it as?

21 A. A Freddie Mac bulletin.

22 Q. Are there any other documents attached to the bulletin?

23 A. Yes.

24 Q. What is attached?

25 A. Looks like some excerpts from different chapters of the

DA3TBAN4

Padgett - direct

1 Freddie Mac seller servicer guide.

2 Q. Is that the selling servicer guide you were referring to
3 before?

4 A. Yes.

5 Q. If you could, could you turn to the page marked U.S.A.
6 131114. It's about seven pages in.

7 A. Yes.

8 Q. Ms. Padgett, do you see section 6111?

9 A. Yes.

10 Q. Is this part of the seller servicer guide?

11 A. Yes, it is.

12 Q. There's a reference to warranties and representations by
13 the seller. Do you see that?

14 A. Yes.

15 Q. Would you explain what that term means to us, please.

16 A. Essentially this describes the promise, if you will, the
17 contract for sellers to deliver loans to Freddie Mac in
18 accordance with these terms.

19 Q. And is this sometimes referred to as a representation and
20 warranty?

21 A. Yes.

22 Q. Or a rep and warrant?

23 Sorry, I didn't hear your answer.

24 A. Yes.

25 Q. Could you look at number one in page -- sorry, in section

DA3TBAN4

Padgett - direct

1 6.11, please. I will read it, it says: The terms, conditions
2 and requirements stated in the purchase documents have been
3 fully satisfied.

4 Do you see that?

5 A. Yes.

6 Q. Is that a representation and warranty that the seller has
7 to make to Freddie Mac?

8 A. Yes.

9 Q. What is meant by the term "purchase documents?"

10 A. Purchase documents would encompass the Freddie Mac guide
11 and all of the master agreements in place with the seller
12 servicer.

13 Q. By Freddie Mac guide, do you mean the seller servicer guide
14 that's in front of you?

15 A. Yes.

16 Q. Now if I could ask you to turn a few more pages in to
17 Section 22.2, it's on page 131490. Do you see Section 22.2?

18 A. Yes.

19 Q. Do you see the term "investment quality mortgage?"

20 A. Yes.

21 Q. You referred to investment quality a few times already in
22 your testimony. Is that the same term that you were referring
23 to?

24 A. Yes.

25 Q. And is Section 22.2 a warranty of investment quality?

DA3TBAN4

Padgett - direct

1 A. Yes.

2 Q. Could you read the last sentence into the record, please?

3 A. The seller warrants that all mortgages sold to Freddie Mac
4 have the characteristics of an investment quality mortgage.

5 Q. Now I just want to ask you before that sentence there is a
6 definition, is that correct?

7 A. Yes.

8 Q. And that definition contains the phrase "is originated in
9 accordance with the requirements of the purchase documents."

10 Do you see at that?

11 A. Yes.

12 Q. Does that apply to the loans that sellers sell to Freddie
13 Mac?

14 A. Yes.

15 Q. What does it mean for a loan to have to be originated in
16 accordance with the requirements of the purchase documents?

17 MR. STRASSBERG: Objection, your Honor.

18 THE COURT: Ground.

19 MR. STRASSBERG: Legal conclusion, your Honor.

20 THE COURT: Sustained.

21 Q. Ms. Padgett, as a national -- in your capacity as national
22 underwriting director, was it important for you to be familiar
23 with what constituted an investment quality mortgage for
24 Freddie Mac?

25 A. Yes.

DA3TBAN4

Padgett - direct

1 Q. Why was it important?

2 A. The role of my team and myself was to determine whether
3 loans met that standard of investment quality.

4 Q. And in that capacity, were you familiar with the definition
5 of an investment quality mortgage?

6 A. Yes.

7 Q. And would you be familiar with whether an investment
8 quality mortgage was originated with the requirements of the
9 purchase documents in making those determinations?

10 A. Yes.

11 Q. And based on your experience as the national underwriting
12 director, what did it mean to you when you were reviewing
13 documents that the mortgage was originated in accordance with a
14 requirements of the purchase documents?

15 MR. STRASSBERG: Objection, your Honor.

16 THE COURT: No, I think that's relevant. Overruled.

17 A. So our review -- to me what that meant was that a loan file
18 would contain sufficient evidence of the borrower's credit,
19 capacity, collateral and eligibility for the various programs.
20 So that meant that the borrower had sufficient income for a
21 sufficient period to be able to be used for the borrower to
22 repay the debt, have sufficient assets to put down, and have
23 equity into the property, that the property itself was of
24 sufficient value to support the mortgage, and that any program
25 eligibility terms were met within the credit boundaries we set

DA3TBAN4

Padgett - direct

1 in the terms of the seller servicer guide and/or any master
2 agreements we had with the sellers.

3 (Continued on next page)

DA33BAN5

Padgett - direct

1 Q. In your experience, did the standard of investment quality
2 vary from lender to lender or was it constant?

3 A. It absolutely, our reviews are blind to any various
4 processes lenders might have. The role was to review whatever
5 the specific terms of business were, relative to that loan on a
6 loan level, and hold every loan to that particular standard.

7 Q. Based on your experience as an underwriter, and also as the
8 national underwriting director, what is the relationship, if
9 any, between the quality of a seller's underwriting and whether
10 a loan's investment quality?

11 MR. STRASSBERG: Objection.

12 THE COURT: Overruled. You may answer.

13 A. From my perspective, the quality of underwriting, having a
14 qualified underwriter, is the only way to determine whether or
15 not a loan met the standard of investment quality. Without
16 having a sufficient qualified staff, the process can be very
17 complicated to determine what amounts of income, for instance,
18 are sufficient to be used for as long a period of time as it
19 would take for repaying a mortgage. Same with collateral. It
20 can be a complicated process to review an appraisal report and
21 determine whether or not the value is supported sufficiently
22 enough to support the loan.

23 Q. Ms. Padgett, in the context of an underwriter, are you
24 familiar with the concept of independence?

25 A. Yes.

DA33BAN5

Padgett - direct

1 Q. Could you explain to us in your experience as an
2 underwriter what the concept of independence means to you.

3 MR. STRASSBERG: Objection, your Honor.

4 THE COURT: Ground?

5 MR. STRASSBERG: Your Honor, this is encroaching upon
6 one of your Honor's prior rulings I believe, so it would be
7 relevance. I can explain to the side bar.

8 THE COURT: Yes.

9 (Continued on next page)

DA33BAN5

Padgett - direct

1 (At the side bar)

2 MR. STRASSBERG: It is good to be able to talk, your
3 Honor. Your Honor, this witness is not involved in any aspect
4 of the decision to purchase loans. She is involved with the
5 repurchase decisions on the back end. So my concern is that
6 her views of importance of underwriting, for example, are not
7 relevant to the issues that are relevant to the case. Whereas
8 with Mr. Tanabe, and one of our colleagues we understood those
9 issues and your Honor ruled those were relevant. Here,
10 frankly, her view may be interesting, but it is not relevant to
11 the issues we're deciding. So that's the nature of the
12 objection.

13 MR. CORDARO: I think to say that Ms. Padgett is only
14 involved with repurchases is cabining what it is she is doing.
15 The repurchase could happen at the end of the process. The
16 process itself is straight underwriting, both by her team and
17 in some cases by her. They are applying the investment quality
18 standard as the standard of underwriting. So even though it's
19 true she's not involved in the purchase decision, she is
20 involved in a process that could culminate in a decision that
21 would affect lenders such as Countrywide. I know the
22 repurchase end of this case is not --

23 THE COURT: What is she going to say in answer to the
24 question about independence?

25 MR. CORDARO: She would say it will affect --

DA33BAN5

Padgett - direct

1 THE COURT: How will she define it?

2 MR. CORDARO: I think she'll just say it is a matter
3 of reporting chains that we've seen before, that the
4 underwriters are not supposed to be compromised by those who
5 are on the volume end of the business. I'm not leading her
6 into repurchasing at all. I am bringing out --

7 THE COURT: See, part of my concern is this. And I'm
8 not sure whether this concern is itself relevant, but I'll
9 share it with you.

10 This would have been a relevant question to
11 Mr. Tanabe. But it was put to Mr. Tanabe. It was put in a
12 manner that was both confusing and defective as to form.
13 Therefore, I sustained the objection. Counsel for the
14 government did not revisit it, did not try to rephrase the
15 question, in part I suspect because she is so new to this
16 process that she didn't focus on the possibility that a
17 question that's defective as to form can easily be reformed.

18 However, I don't know that that's a reason for letting
19 a witness as to whom it is not directly relevant answer the
20 question, except that the immediate question, which is
21 something about what do you mean by independence or something
22 like that, I can't remember the exact question, that's
23 something that she can testify to, even if she is not the
24 person who was involved.

25 It is the follow-up question that would be the one

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Padgett - direct

1 that would offend defense counsel's objection.

2 So I think I will, having now burdened the record with
3 all these errant thoughts, I will allow her to define what is
4 meant by independence, but I will not allow her to answer the
5 question of would it be important in the purchase and sale of
6 these loans or something along those lines.

7 So the first question yes, the second question no.

8 MR. CORDARO: Thank you.

9 (Continued on next page)

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DA33BAN5

Padgett - direct

(In open court)

Q. Ms. Padgett, could you explain to us in your experience as an underwriter what the concept of independence means to you?

A. From an underwriter's perspective, having worked both in what we call the primary market versus secondary market, so I work for mortgage companies and as well as Freddie Mac. It is having an underwriting decision that is not subject to influence from others that could derive some benefit from that.

So, for example, underwriters where borrowers' loans are being processed have a loan officer who is commissioned contacting you to find out what the status is or trying to provide additional information or some way of influencing that. Would be an example of the issue around independence.

Underwriters need to be able to assess independently, without any influence to make that determination, as to whether those loans were investment quality.

MR. STRASSBERG: Objection, your Honor. Move to strike the last part of her answer.

THE COURT: We'll leave it at that. Put another question. I think that's all I am going to allow on the subject.

MR. CORDARO: I'll move on, your Honor.

Q. Ms. Padgett could you turn to section 48.9 of the guide, that's on 132055. Do you see section 48.9 of the guide?

A. Yes.

DA33BAN5

Padgett - direct

1 MR. CORDARO: I'm sorry, Ms. Michaud, 48.9. Thank
2 you.

3 Q. Do you see where it says reporting requirements?

4 A. Yes.

5 Q. Could you explain to us what is meant by reporting
6 requirements.

7 A. Yes. This section of the guide references our requirements
8 for our sellers to have their own quality control program where
9 they're determining that the loans that they delivered to
10 Freddie Mac, a sample of those loans were investment quality.
11 And when they determine that they have any loans that were not
12 of investment quality, the sellers are required to report those
13 loans to us.

14 Q. Is this sometimes referred to as a self-reporting
15 requirement?

16 A. Yes.

17 Q. Getting back to the process that you explained to us a few
18 minutes back. Did self-reporting have any role in that
19 process?

20 MR. HEFTER: Objection. Vague.

21 MR. CORDARO: I can rephrase the question, your Honor.

22 Q. Ms. Padgett, you were testifying before about the review
23 that your team conducted of sampled loans. Do you recall that
24 testimony?

25 A. Yes.

DA33BAN5

Padgett - direct

1 Q. Did self-reported loans have any role in that overall
2 process that you were talking about?

3 A. No.

4 Q. So when would a lender have to self-report a loan?

5 A. Whenever they determined --

6 MR. STRASSBERG: Objection, your Honor.

7 THE COURT: Ground?

8 MR. STRASSBERG: Legal conclusion.

9 THE COURT: As phrased, sustained. But I think there
10 are questions in that area that could be put.

11 Q. Ms. Padgett, could you read the last paragraph of section
12 48.9.

13 A. "A seller must notify Freddie Mac (see directory 2) in
14 writing within 30 days of the seller's determination that a
15 quality control finding affects the eligibility of a mortgage
16 sold to Freddie Mac. Freddie Mac reserves the right to
17 increase the sampling or to impose other requirements on a case
18 by case basis."

19 Q. Are you familiar what is meant by the phrase "quality
20 control finding"?

21 A. Yes.

22 Q. What is meant by that phrase?

23 MR. STRASSBERG: Again, your Honor, objection.

24 THE COURT: Overruled.

25 What is your understanding of what is meant by that

DA33BAN5

Padgett - direct

1 phrase?

2 THE WITNESS: This would refer to the findings from
3 their quality control review, if their quality control group
4 went back through, re-underwrote loans they had delivered to
5 Freddie Mac, and found some of those loans to be not of
6 investment quality.

7 Q. What is your understanding of what would happen if the
8 lender self-reported any of those loans to Freddie Mac?

9 MR. STRASSBERG: Objection.

10 MR. HEFTER: Objection.

11 THE COURT: Overruled.

12 A. The process when we receive notification of a seller
13 self-reporting is generally we would call in the loan file, and
14 review the loan file ourselves, as well as any documentation
15 that they provided relative to their finding. And make a
16 determination as to whether we concurred that was not
17 investment quality. And if so, would apply different various
18 remedies.

19 Q. When you say "we," who are you referring to?

20 A. I'm sorry. My underwriting team.

21 Q. Would be the same underwriting team that was involved in
22 the process that we were discussing about 15 minutes ago?

23 A. Yes.

24 Q. Is it your understanding that the existence of this
25 self-reporting requirement meant that a lender could sell not

DA33BAN5

Padgett - direct

1 investment quality loans to Freddie Mac?

2 MR. STRASSBERG: Objection.

3 MR. HEFTER: Objection.

4 THE COURT: Sustained. Leading.

5 Q. Section 22.2 of the selling guide describes an investment
6 quality mortgage. Is that correct?

7 A. Yes.

8 Q. Is it a warranty by the seller or not that loans sold to
9 Freddie Mac must be investment quality?

10 MR. STRASSBERG: Objection, your Honor.

11 THE COURT: Ground?

12 MR. STRASSBERG: It is asking for a legal conclusion,
13 your Honor.

14 THE COURT: All these questions should be taken by the
15 witness as referring to her understanding, which in this
16 situation is relevant, unlike some other situations that we've
17 discussed at the side bar. So with that understanding, I will
18 allow the question.

19 A. Can you repeat the question, please?

20 Q. Sure, I can. Is it your understanding that section 22.2 is
21 a warranty that loans sold to Freddie Mac have the
22 characteristics of an investment quality mortgage?

23 A. Yes.

24 Q. Is it your understanding that the self-reporting
25 requirement alters or does not alter that particular

DA33BAN5

Padgett - direct

1 requirement?

2 MR. HEFTER: Objection.

3 THE COURT: Overruled.

4 A. It's my understanding that the self-reporting does not
5 override the investment quality requirement.

6 Q. You mentioned the remedy of repurchase earlier. Based on
7 your understanding, does the existence of the remedy of
8 repurchase alter or not alter the investment quality
9 requirement?

10 A. It does not.

11 MR. CORDARO: May I confer just very briefly, your
12 Honor?

13 THE COURT: Yes.

14 MR. CORDARO: Nothing further on direct from the
15 United States, your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. STRASSBERG:

19 Q. Good afternoon, Ms. Padgett. My name is Richard Strassberg
20 and I represent Countrywide and the Bank of America. And I'd
21 like to ask you some questions this afternoon.

22 Before we begin, let me make sure we understand the
23 scope of your responsibilities at Freddie Mac during the time
24 period from 2007 to 2008.

25 During that period, you were the national underwriting

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Padgett - cross

1 director, correct?

2 A. Yes.

3 Q. In that role, you supervised the underwriting and quality
4 control staff at Freddie Mac, right?

5 A. Yes.

6 Q. They selected loans Freddie Mac had purchased for review,
7 correct?

8 A. I'd like to clarify that.

9 Q. Sure.

10 A. The quality control in the underwriting department doesn't
11 select the sample of loans. It is selected by a different
12 group.

13 Q. So the different group that selects them, but your group
14 would review them?

15 A. That's correct.

16 Q. That included loans from Countrywide, correct?

17 A. Yes.

18 Q. And they included loans from the other major lenders that
19 Freddie Mac dealt with, correct?

20 A. Yes.

21 Q. Your review, as I think you testified, was done in order to
22 assess if the loans that Freddie Mac had purchased were of
23 investment quality, correct?

24 A. Yes.

25 Q. You also oversaw the repurchase negotiations that Freddie

DA33BAN5

Padgett - cross

1 Mac had with Countrywide, is that right?

2 A. No.

3 Q. Okay. Well, is it fair to say that the contracts provided
4 for a repurchase remedy in the event that Freddie Mac
5 determined a loan was not investment quality?

6 A. Yes, that was one remedy.

7 Q. That was a remedy that was in the contract that Freddie Mac
8 had with Countrywide, right?

9 A. Yes.

10 Q. And it was a remedy that was in the contract that Freddie
11 Mac had with all of its lenders, right?

12 A. Yes.

13 Q. Before we get to some questions on this repurchase process,
14 let's again focus on the things that you were responsible for
15 in this time period. So for all of my questions, Ms. Padgett,
16 I'm just going to focus you on 2007 to 2008, rather than what
17 you may be doing today.

18 So in the 2008 time frame, were you involved in
19 negotiating the contractual agreements that existed between
20 Freddie Mac and Countrywide?

21 A. No.

22 Q. Were you involved in that time period in choosing what
23 kinds of loans Freddie Mac purchased?

24 A. No.

25 Q. Were you involved in developing policies concerning which

DA33BAN5

Padgett - cross

1 kinds of loans Freddie Mac purchased?

2 A. No.

3 Q. How about in determining credit risk in association with
4 different types of loans?

5 A. No.

6 Q. Were you involved in setting the market share goals that
7 Freddie Mac had for its dealings with Countrywide?

8 A. No.

9 Q. How about were you involved with conducting on-site reviews
10 of lenders like Countrywide?

11 A. No.

12 Q. Well, were there other groups at Freddie Mac that were
13 responsible for those issues that we've just gone through?

14 A. Yes.

15 Q. But it just wasn't yours, right?

16 A. That's correct.

17 Q. Am I right that Freddie Mac had a dedicated team of people
18 who conducted on-site reviews of lenders like Countrywide to
19 gather information about how the lenders processed the loans
20 that they sold? Right?

21 A. Yes.

22 Q. And that group conducted due diligence reviews, correct?

23 MR. CORDARO: Objection, your Honor.

24 THE COURT: Ground?

25 MR. CORDARO: Foundation.

DA33BAN5

Padgett - cross

1 THE COURT: Do you know what is meant by the term "due
2 diligence"?

3 THE WITNESS: That was going to be my question, is
4 what do you mean by due diligence.

5 THE COURT: Good question. Go ahead, counsel.

6 MR. STRASSBERG: I'll withdraw and we can move on.

7 Q. The group that we were talking about that conducted these
8 on-site reviews process, that was called the external
9 operations risk management group or the EORM group, right?

10 A. Yes.

11 Q. That group operated independently of you in your group,
12 right?

13 A. Yes.

14 Q. Is it fair to say, Ms. Padgett, that you did not have any
15 personal interactions with the Full Spectrum Lending Division
16 of Countrywide?

17 A. That's correct.

18 Q. You never visited the Full Spectrum Division's offices?

19 A. That's correct.

20 Q. You never spoke with anyone who was employed by Full
21 Spectrum Lending, right?

22 A. That's correct.

23 Q. You testified that in this time period, you supervised the
24 process that reviewed loans that Freddie Mac had purchased from
25 various lenders, including Countrywide, right?

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Padgett - cross

1 A. Yes.

2 Q. As part of that process, Freddie Mac reviewed all of the
3 loans that had gone into default within the first few years of
4 having been bought, correct?

5 A. Essentially.

6 Q. Well, Freddie Mac also reviewed, in addition to loans that
7 had gone into default, loans that had chronic delinquencies in
8 payment, is that right?

9 A. Yes. There was a formula for determining that. But that's
10 a good way to describe it.

11 Q. You also testified that you did reviews of performing loans
12 that had just been purchased by Freddie Mac, correct?

13 A. Yes.

14 Q. That was part of the sampling that you explained was done
15 by another group, but then your group would review the results
16 of that sample, right?

17 A. Yes.

18 Q. And that sampling and those reviews were done roughly on a
19 monthly basis of loans as they were coming in to Freddie Mac,
20 correct?

21 A. Yes.

22 Q. If it was determined, as part of your review, that the loan
23 was not of investment quality, Freddie Mac could require the
24 seller to repurchase the loan, right?

25 A. That's correct.

DA33BAN5

Padgett - cross

1 Q. If the seller repurchased the loan, Freddie Mac would get
2 paid back for the cost of the loan, correct?

3 A. Yes.

4 Q. You talked about Freddie Mac having other remedies in
5 addition to the repurchase remedy that was built into the
6 contract with Countrywide, right?

7 A. I'm not sure I understand.

8 Q. Let me put it this way. You testified about something
9 called the feedback program, do you remember that?

10 A. Yes.

11 Q. The feedback program was a program where Freddie Mac would
12 not seek to follow through on any remedy it might have had in
13 the contract, even though based on your review it might have
14 found what it considered defects in the particular loan that
15 had been sold?

16 MR. CORDARO: Objection.

17 THE COURT: Ground?

18 MR. CORDARO: He's testifying, your Honor.

19 THE COURT: Well, that is a question. The question,
20 as I understood it, the question is, was the feedback program a
21 program such as counsel postulated in the question. And the
22 answer is yes, no, or maybe or whatever.

23 So, do you understand the question?

24 A. I was actually going to ask you to repeat that, please.
25 Not sure I got the question.

DA33BAN5

Padgett - cross

1 Q. Well, let me try to rephrase it. And tell me if I
2 summarize what you described correctly.

3 That Freddie Mac had a feedback program that would
4 allow it for loans that were performing to keep those loans,
5 even though your review from your quality control group might
6 have identified that those loans had defects such that they
7 might otherwise be considered not of investment quality.

8 Correct?

9 A. Yes, but if I can clarify. The guide allows for remedies,
10 and the feedback program was a remedy. We issued a remedying
11 letter. And the remedy was that, despite the non-investment
12 quality, we're retaining it with the right to go back for
13 repurchase, for educational purposes, or whatever.

14 Q. I see. So this was another one of the remedies, the
15 feedback program itself, that was available to you?

16 A. That's correct.

17 Q. The feedback program allowed Freddie Mac to keep these
18 performing loans and to profit from its possession of those
19 performing loans, right?

20 MR. CORDARO: Objection.

21 THE COURT: Ground?

22 MR. CORDARO: Foundation, profit, also relevance.

23 THE COURT: Well, I was wondering when you were going
24 to get around to relevance. Unless counsel wants to make a
25 showing at the side bar, I don't see the relevance and I'll

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Padgett - cross

1 sustain the objection.

2 MR. STRASSBERG: Your Honor, we can move on.

3 THE COURT: Okay.

4 Q. Ms. Padgett, you are aware that Freddie Mac chose to buy
5 stated income and stated asset loans from Countrywide, correct?

6 MR. CORDARO: Objection, your Honor.

7 THE COURT: Ground?

8 MR. CORDARO: Again, foundation and relevance.

9 THE COURT: I'll reserve on relevance, but on
10 foundation is sustained. Lay a foundation if you can.

11 Q. Based on your review of loans as part of the quality
12 control process, did you become aware of certain types of loans
13 that Freddie Mac purchased?

14 A. Yes.

15 Q. Were among those types of loans stated income stated asset
16 loans?

17 A. Yes.

18 Q. Did Freddie Mac purchase those types of loans from many
19 different lenders?

20 A. Yes.

21 Q. Including Countrywide?

22 A. Yes.

23 Q. Are you aware, Ms. Padgett, that Freddie Mac entered into
24 specific variances that specifically allowed Freddie Mac to
25 purchase stated income stated asset loans from Countrywide?

DA33BAN5

Padgett - cross

1 A. By variance, are you asking about the waiver to be able to
2 deliver those loans?

3 Q. Is that another way you would have referred to a variance,
4 Ms. Padgett?

5 A. Yes.

6 THE COURT: Wait. No. That I will not permit. But
7 you can rephrase.

8 Q. So, let me rephrase the question with respect to variance.
9 Was it the case, Ms. Padgett, that Freddie Mac entered into a
10 specific written waiver with respect to Countrywide so that
11 Freddie Mac could purchase stated income and stated asset loans
12 from Countrywide?

13 MR. CORDARO: Objection. Foundation.

14 THE COURT: If you know the answer, I'll allow that.

15 A. Yes.

16 Q. Ms. Padgett, to the extent that Freddie Mac desired that a
17 certain process be performed in a particular way, Freddie Mac
18 had the ability to reflect those requirements in that seller
19 servicer guide that you talked about on your direct
20 examination, isn't that right?

21 MR. CORDARO: Objection.

22 THE COURT: Overruled.

23 A. Can you repeat the question, please?

24 Q. Yes. To the extent that Freddie Mac wanted a particular
25 process to be a requirement of its seller servicer guide, it

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Padgett - cross

1 had the ability to put that requirement explicitly in the
2 seller servicer guide, didn't it?

3 THE COURT: So I think the possible confusion is what
4 do you mean by "they had the ability." Do you mean they
5 physically and mentally had the ability? Do you mean they
6 legally had the ability, which she can't comment on. Do you
7 mean that her understanding of the contractual relations was it
8 would permit that? Etc. So why don't we clarify.

9 MR. STRASSBERG: Why don't I rephrase it.

10 Q. Was it your understanding, Ms. Padgett, that the seller
11 servicer guide, along with any waivers and any other documents
12 that would make up the purchase documents as you defined them,
13 would reflect all the requirements that Freddie Mac demanded of
14 any seller of loans that it was going to buy loans from?

15 A. Yes.

16 Q. So for example, we looked, and I'm going to try if we can
17 kind of remember not to do this again, but we looked on direct
18 or you did about one of the provisions about the quality
19 control program requirements that lenders were required to
20 have. Do you remember that?

21 A. Yes.

22 Q. That's an example of a particular provision that requires a
23 particular process. Do you recall that?

24 MR. CORDARO: Objection, your Honor.

25 THE COURT: I think that's argumentative in effect.

DA33BAN5

Padgett - cross

1 Sustained.

2 Q. Ms. Padgett, based on your understanding and knowledge of
3 the seller servicer guide, and just so it's clear, I know we've
4 introduced excerpts in Plaintiff's Exhibit 170, but the actual
5 seller servicer guide is something on the order of 2,000-plus
6 pages, isn't that right?

7 A. Yes.

8 Q. Based on your familiarity, based on your knowledge of the
9 seller servicer guide, am I correct that there is no provision
10 anywhere in those 2,000-plus pages that requires a particular
11 type of training before an employee can clear a loan to close?

12 MR. CORDARO: Objection.

13 THE COURT: Ground?

14 MR. CORDARO: Well, counsel is asking about a large
15 document, and --

16 THE COURT: Of course, I am quite shocked and
17 surprised that no counsel has bothered to introduce a
18 2,000-page document in very grave derogation of the manner in
19 which both sides have otherwise proceeded.

20 But, under those circumstances, given her familiarity
21 with the guidelines, why is this an objectionable question?

22 MR. CORDARO: Your Honor, it is the particular type of
23 training which I find to be vague, again. Because, again, it
24 is like, what does "particular" mean in this context.

25 THE COURT: Well --

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Padgett - cross

1 MR. CORDARO: Does it mean --

2 THE COURT: I guess what you're raising from your
3 first objection, as I think about it further, is a best
4 evidence objection. How clever of you to state it that way.

5 So, does either side want to put in the 2,000-page
6 document?

7 MR. STRASSBERG: Your Honor, we're not seeking to
8 burden --

9 THE COURT: Here's what it comes down to. I'm going
10 to allow this question, notwithstanding what I think is a valid
11 best evidence objection, if the government and the defense tell
12 me they don't intend to put in this document. So it's your
13 collective and individual choice.

14 MR. STRASSBERG: Our intention is not to, your Honor.

15 MR. SULLIVAN: I'm leaving open the possibility of
16 putting it in. I was afraid you'd put me in jail if I put it
17 in, it's so thick.

18 THE COURT: Well the temptation would be great, of
19 course.

20 MR. SULLIVAN: I know. We don't know yet. We'd like
21 to see the rest of the government's case. Maybe we would put
22 it in.

23 THE COURT: On that straightforward answer, I'm still
24 going to allow the question. You may answer.

25 A. To my knowledge, the guide is not prescriptive in that

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Padgett - cross

1 regard.

2 Q. Similarly, Ms. Padgett, am I right that there is no
3 provision anywhere in the guide that requires a particular
4 compensation structure for employees of a lender, isn't that
5 right?

6 A. That's correct.

7 Q. Similarly, there is no provision anywhere in the guide that
8 requires that an employee of a lender have a particular title
9 in order to do underwriting functions relating to a loan that
10 would be sold to Freddie Mac?

11 A. That's correct.

12 Q. So, now, Ms. Padgett, if you recall we looked at or you
13 looked at with the government section 6.11 of the excerpts of
14 the selling guide, the general category that says on the left
15 representations and warrantys. Do you remember that?

16 A. Yes.

17 Q. Is it fair to say that your understanding of that
18 requirement is that those representations and warrantys are
19 made on a loan-by-loan basis?

20 A. Yes, that's correct.

21 Q. So, is it also fair to say that a particular underwriting
22 process used by a lender would be consistent with the purchase
23 documents as long as the loans produced were still of
24 investment quality?

25 MR. CORDARO: Objection.

DA33BAN5

Padgett - cross

1 THE COURT: Overruled.

2 A. That's correct.

3 MR. STRASSBERG: Thank you, your Honor. No further
4 questions. Thank you, Ms. Padgett.

5 MR. HEFTER: Just to save time I am going to ask my
6 questions from here.

7 CROSS-EXAMINATION

8 BY MR. HEFTER:

9 Q. Ms. Padgett, my name is Michael Hefter and I represent
10 Rebecca Mairone. Good afternoon.

11 I think you testified in response to Mr. Strassberg's
12 testimony that you did not have any interaction with anybody at
13 FSL, is that correct?

14 A. That's correct.

15 Q. That would include Ms. Rebecca Mairone, correct?

16 A. Yes.

17 Q. You also said you never spoke to anyone at FSL, correct?

18 A. Yes.

19 Q. That would include Ms. Mairone?

20 A. Yes.

21 Q. That would include correspondence as well? E-mail,
22 letters?

23 A. That's correct.

24 Q. You never corresponded with Ms. Mairone, that's my
25 question, correct?

DA33BAN5

Padgett - cross

1 A. Yes.

2 Q. You're not aware of any representation by Ms. Mairone to
3 Freddie Mac, correct?

4 A. That's correct.

5 Q. I have one or two more questions. I think you testified in
6 your background that you became an underwriter in 1979?

7 A. That's about the year, yes.

8 Q. About the year 1979. You started in the mortgage industry
9 in 1976, is that correct?

10 A. Yes.

11 Q. Thank you.

12 THE COURT: Redirect?

13 MR. CORDARO: Yes, but could we have a brief side bar
14 first because I think it will move things along.

15 (Continued on next page)

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DA33BAN5

Padgett - cross

1 (At the side bar)

2 MR. CORDARO: Your Honor, on the direct examination, I
3 was going to put some questions to the witness about whether
4 independence or compensation or training of underwriters could
5 affect investment quality.

6 I took the Court's ruling at the side bar to preclude
7 me from putting those questions. However, counsel has now gone
8 into that area on his cross-examination with respect to the
9 contract when he asked questions specifically about training
10 and compensation. And I would argue that that has now opened
11 the door to that kind of question based on her experience,
12 whether compensation or training has any relationship to
13 investment quality in her experience.

14 MR. STRASSBERG: Your Honor, I attempted certainly to
15 very much follow your Honor's ruling. My questions were about
16 what was or was not in the selling documents. Because she is
17 not a person who is involved in the decision to repurchase.

18 THE COURT: I don't think the door has been opened.

19 (Continued on next page)
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DA33BAN5

Padgett - cross

(In open court)

REDIRECT EXAMINATION

BY MR. CORDARO:

Q. Good afternoon again, Ms. Padgett. You were asked several questions on cross-examination about certain areas that you or your team were not involved in. Do you remember those questions?

A. Yes.

Q. Were you and your team involved in underwriting loans sold by Countrywide to Freddie Mac?

A. Yes.

Q. You were asked on cross-examination if you had had any contact with any employees of FSL. Do you remember that question?

A. Yes.

Q. Do you recall having any contact with any employees of Countrywide in connection with your position?

A. Yes.

Q. Were those contacts in 2007, 2008?

A. Yes.

Q. Do you recall which employees you had contacts with at Countrywide during that period?

MR. STRASSBERG: Objection, your Honor.

THE COURT: Ground?

MR. STRASSBERG: Beyond the scope.

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Padgett - redirect

1 THE COURT: No, I don't think so. Overruled.

2 A. The two people I had the most contact with during that time
3 frame were Nancy Bush and Cindy Simantel.

4 Q. Were Ms. Bush and Ms. Simantel employees of Countrywide?

5 A. Yes.

6 Q. Without getting into the substance, could you give me a
7 sense of how often you had contacts with Ms. Bush?

8 A. Very frequently. So, I would say multiple times a month.

9 Q. And same question for Ms. Simantel.

10 A. About the same level of frequency, it was typically the
11 three of us and others involved in discussions.

12 Q. You were asked a series of questions about stated income
13 loans. Do you recall those questions?

14 A. Yes.

15 Q. Could you just set out for us what a stated income loan is.

16 A. Yes. It would be a loan where the program allowed
17 borrowers to come in and apply for and get mortgages, where
18 they could state how much they made, as far as their income
19 amount to be used for qualification. And that -- there were
20 requirements around particular credit scores they would have to
21 have, and there needed to be some analysis around the
22 reasonableness of what that income was relative to the type of
23 work they did and tenure.

24 Q. In your career, did you have any experience with the
25 underwriting of stated income loans?

DA33BAN5

Padgett - redirect

1 A. Yes.

2 Q. In your experience, does the underwriting of stated income
3 loans pose or not pose any particular challenges?

4 MR. HEFTER: Objection, your Honor. Relevance.

5 THE COURT: Sustained.

6 Just so the jury is clear as to what it is and what it
7 isn't. Prior to the advent of stated income loans, if someone
8 applied for a mortgage and said their income was \$60,000, what
9 steps in your experience would a bank normally take to verify?

10 THE WITNESS: So, prior to stated income, if someone
11 came in disclosed their income amount, we would go to the
12 employer and confirm the amount of the salary, if they were
13 salaried, or obtain tax returns to confirm the amount of income
14 if they were self-employed or had other sources of income.

15 THE COURT: After the advent of stated income loans,
16 where stated income loans were permitted, those kind of checks
17 were not required. Do I understand that correctly?

18 THE WITNESS: That's correct. Income was not
19 verified.

20 THE COURT: Go ahead, counsel.

21 BY MR. CORDARO:

22 Q. Based on your experience, what, if any, is the relationship
23 between the quality of underwriting and whether a stated income
24 loan could be investment quality?

25 MR. STRASSBERG: Objection.

DA33BAN5

Padgett - redirect

1 MR. HEFTER: Objection.

2 THE COURT: Ground?

3 MR. STRASSBERG: Relevance, again.

4 MR. HEFTER: Foundation.

5 THE COURT: Overruled.

6 A. Can you repeat that question, please?

7 Q. Sure I can. Based on your experience, what, if any, is the
8 relationship between the quality of underwriting and whether a
9 stated income loan could be an investment quality loan?

10 A. So, the underwriting would be potentially more difficult,
11 because there would not be an income or employment document to
12 refer to for an underwriter to determine the qualifying income.
13 In the case of a stated income loan, you have to look at the
14 loan file holistically, balance out all the different pieces of
15 the loan. So determining reasonableness of income was very
16 challenging.

17 And an example I can give is, on a loan application,
18 if the borrower says they worked for the Smith Company and
19 their title is manager, and they make \$6,000 a month, there is
20 no context for that to determine whether that's a reasonable.
21 Don't know the type of employment, you don't -- you can't put
22 that into context.

23 So it was very difficult and more challenging in my
24 opinion to underwrite those loans.

25 MR. CORDARO: Nothing further on redirect, your Honor.

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Padgett - redirect

1 THE COURT: Anything further?

2 MR. STRASSBERG: Nothing further.

3 MR. HEFTER: No, your Honor.

4 THE COURT: Thank you so much. You may step down.

5 (Witness excused)

6 THE COURT: All right, ladies and gentlemen, as
7 previously indicated, we're going to break for today. But we
8 will resume at 9:30 tomorrow. So have a very good evening,
9 we'll see you then.

10 (Jury excused)

11 (Continued on next page)

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1 THE COURT: First, just for guidance, if any it may
2 have, I thought the examination and testimony of Ms. Padgett is
3 a model of how I would hope the examination and
4 cross-examination and testimony will be conducted. All the
5 questions on both sides, even those that may ultimately have
6 led to sustained objections, were by and large models of
7 clarity and simplicity, and the result was that -- partly, I
8 suppose, because of the witness's own personality -- that she
9 was able to give straightforward, simple answers, rather than
10 convoluted or answers beyond the scope as we have had with a
11 number of witnesses. So if you want to have a model in mind of
12 what the Court would prefer to see, you've just seen such a
13 model.

14 With respect to Ms. Simantel, I didn't get any
15 citations from the government, but is she an officer of any of
16 the defendants?

17 MS. MAINIGI: Your Honor, her title is technically
18 SVP, but we would not view her to be an officer of the company.
19 There are upwards of 19,000 SVPs at Bank of America.

20 THE COURT: That's the question. If she is an officer
21 when she can be subpoenaed or noticed directed at the corporate
22 defendant can be issued to require her appearance. If she is
23 not an officer, then it can't. If she is just a non-officer
24 employee.

25 MS. MAINIGI: She's not even a managing director, your

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1 Honor.

2 THE COURT: Oh my gosh.

3 MS. MAINIGI: She has no window in her office, your
4 Honor.

5 THE COURT: But she hasn't been furloughed.

6 So, does the government want to respond to that?

7 MR. CORDARO: Yes, your Honor. I think there is broad
8 agreement here that the only issue is whether she is an
9 officer. The Aristocrat case from Judge Leisure and your
10 Honor's decision set out what the issue is.

11 A senior vice president of a corporation like Bank of
12 America in our view is an officer. We would assume if she
13 holds that title, she is a manager, that she is a decision
14 maker within her ambit, whatever that ambit is. And therefore,
15 we would say she is an officer and can be compelled to come to
16 court here in New York.

17 THE COURT: That's the issue. So, anyone wants to
18 provide me with, and we want to try for her sake, among others,
19 to bring this to a head. Did she end up with separate counsel?

20 MS. MAINIGI: She does have separate counsel.

21 THE COURT: You can inform -- who is the counsel?

22 MS. MAINIGI: Becky Walker James.

23 THE COURT: You can inform counsel that if counsel
24 wants to be heard on that issue, if she's not willing to
25 voluntarily appear, of course I haven't yet decided the

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1 admissibility of the evidence for which she's being called.
2 That's a separate question.

3 But if counsel for the witness wants to be heard on
4 this issue whether she's an officer or not, otherwise what I'd
5 like to get from the defendants is basically job description,
6 things like that. And from the government any evidence you
7 have that bears on whether she is an officer.

8 MR. CORDARO: Thank you, your Honor.

9 MS. MAINIGI: Your Honor, can we just e-mail it to
10 your law clerk this evening just so we can move this matter
11 along?

12 THE COURT: That's fine. Then I think that's all we
13 have outstanding at the moment. Give me the line up again for
14 tomorrow.

15 MR. CORDARO: Your Honor, it will be Ms. Brewster,
16 Mr. Sobczak, then Boland by video.

17 MS. SCHOENBERGER: Price by video if we have your
18 Honor's rulings.

19 THE COURT: I don't have the transcript.

20 MS. SCHOENBERGER: I believe it was delivered to
21 chambers this morning. We weren't counting on that being
22 completed.

23 THE COURT: It may be. I've barely been in chambers.

24 MS. SCHOENBERGER: We'll also be prepared to call
25 Mr. Hansen.

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1 MS. MAINIGI: Does it appear, your Honor, I'm just
2 looking for clarification for the purpose of Rule 50 written
3 motions. Does it appear to the government that they will rest
4 tomorrow or Monday?

5 THE COURT: How long are the depositions?

6 MR. CORDARO: Mr. Boland's is one hour, your Honor.
7 Price would be less. I am assuming if we are resting tomorrow
8 it would be near the end of the day. Just given that we have
9 five names here on this list. And judging from previous
10 experience.

11 MS. MAINIGI: Just for clarification, your Honor,
12 Mr. Sobczak is a witness that had been on our witness list as
13 well. I suspect that whatever gets covered on direct is
14 sufficient for me as far as covering him on cross. But I just
15 put that out there.

16 THE COURT: As you know under my practices, if their
17 direct does not cover all that you would have covered on
18 direct, then you may, in addition to your cross, at the same
19 time, have direct, and the portion of your examination that is
20 direct has to have non-leading questions.

21 MS. MAINIGI: Understood. You want that whole
22 colloquy done straight after the cross --

23 THE COURT: No, whatever you'd like. You can mix and
24 match.

25 Yes.

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1 MR. HEFTER: I guess for further clarification, your
2 Honor, if it sounds like at the very least we are going to be
3 ending the day very late, if the government finishes its case
4 at all. And would your Honor want argument at 5 p.m. tomorrow
5 on the Rule 50 motions or at some other point in time?

6 THE COURT: Well, here's the issue. I do not want to
7 impinge on good jury time. So, say if the government finished
8 at 3 o'clock. It sounds quite unlikely, but taking that
9 hypothetically, then yes we'd have Rule 50 right then. If the
10 government finishes at 5 o'clock, I will give counsel the
11 choice of either doing the Rule 50 then, or doing it at 8:30 on
12 Monday morning. And that will be defendants' choice.

13 MR. HEFTER: Fair enough.

14 MS. MAINIGI: One point of information. I understand
15 Mr. Sobczak, who has been here waiting all week to testify,
16 needs to fly out tomorrow evening and cannot return on Monday.
17 So we may need to make some allowances in schedule.

18 THE COURT: Of course. We would always accommodate
19 that. Okay. Very good. Now I have an evidentiary hearing
20 starting in three minutes, so I'll need to ask you to clear out
21 fairly quickly.

22 (Adjourned until October 4, 2013, at 9:30 a.m.)
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